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Current Topics.

The Debate on the Appointment of New Judges.

THE DEBATE in the Lords last week on the Address to increase the number of judges, revealed the prevalence of a general desire to expedite the trial of matters before the various divisions of the High Court. There was, however, a singular divergence of opinion among the highest authorities as to the best means to ensure such expedition. The Lord Chancellor, whilst showing a good cause for an increase in the statutory number of King's Bench judges, looked for relief from the exercise of the power conferred by the Administration of Justice Act, 1925, to concentrate work on assizes in various centres, and thus effect a saving of a considerable amount of waste in judicial power. Lord HALDANE doubted whether Lord CAVE had made out his case for an increase in the number of judges. He suggested three other possible solutions of the difficulty in the form of a slight curtailment of the Long Vacation, a wider use of the power to transfer non-jury cases to the Chancery Division and the cessation of the practice of constantly calling upon judges to devote their time to public enquiries and commissions. Lord BUCKMASTER'S suggested changes were of a much more radical character —the re-organisation of the whole assize system involving a complete rearrangement of the centres and a general increase in the powers and status of county court judges. He also advocated a fuller use of the power to transfer non-jury cases to the Chancery Division and raised the delicate but none the less important question of the age of the judges, and, in particular, the age at which they should be called upon to retire. The suggestion of an earlier retirement did not meet with the approval of Lord DARLING, who, however, was all in favour of shortening the Long Vacation—a policy strongly opposed by the Master of the Rolls. The Lord Chief Justice was whole-hearted in his vindication of the assize system. He dwelt upon the increase in amount of the judicial work, taking the growth of the Court of Criminal Appeal as an illustration.

Increase in the number of New Judges.

IT IS A matter of some surprise that the resolution for the appointment of two more judges to fill the vacancies caused by the deaths of Mr. Justice FRASER and the elevation of Mr. Justice GREER to the Court of Appeal, should have met with any opposition in the House of Lords. As the Lord Chief Justice pointed out, there are at the moment more than 1,000 causes awaiting trial, and that fact alone should be justification enough for the appointment of additional judges. To exercise parsimony—and not economy—in the appointment of judges tends to diminish the efficacy of our system of administering justice. If justice is to be delayed, it might in several instances be just as well especially from the point of view of a poor litigant to surrender or forego one's rights altogether. Apart from any such question, however, it would appear to be very false economy indeed to keep the judicial staff of the country in a depleted condition, since the revenue from the increased flow of litigation, which may be attributed to the additional appointments would practically counterbalance the extra financial burden thereby imposed on the State. As the law at present stands, by virtue of the proviso to s. 1 (2) of the Supreme Court of Judicature Act, 1910, where the total number of the puisne judges of the King's Bench is fifteen or upwards, no vacancy may be filled unless an address is presented by both Houses of Parliament. This fetter on the appointment of additional judges appears to be inconvenient, and likely in certain circumstances, owing to political and similar reasons, to hinder the prompt appointment of extra judges to cope with the work of the division. There appears to us to be no good reason why this provision, with proper safeguards, should not be repealed, since it is essential, if the work of the division should require it, that vacancies on the High Court Bench should be filled without avoidable delay.

Expedition of Work in the Chancery Division.

THE ANNOUNCEMENT of a re-organisation of the work in the Chancery Division follows immediately upon the debate in the Lords last week; but the new arrangement will not become effective until next term. Under the present system the six Chancery judges are paired in three groups—one member of each pair takes witness actions and the other member non-witness actions and other matters. The new system provides for two groups consisting each of three judges. The witness actions will, as from the last day of this term, be arranged in two lists, so that in effect there will be three lists in each of the two groups. The non-witness actions and other matters will be in one list; the shorter witness actions—actions that cannot reasonably be expected to last more than ten hours—will be in the second list; and the other witness actions will make

up the third list. There will naturally be some difficulty in arranging the two parts of the witness list; the responsibility of determining upon the proper list is in effect cast upon counsel drawing up the pleadings of the party entering the trial. If counsel certifies that the trial is not expected to last more than ten hours the case will be put down in the short action list. There seems to be doubt in some quarters whether the new arrangement will prove effective; it will not speed up the trial of *all* causes in *all* Chancery Lists, but it certainly is an arrangement that is worth an extended and sympathetic trial, for it will afford relief in the ordinary type of short witness case, the trial of which will no longer be liable to be held back for days, if not weeks, by some one lengthy trial. In particular, the new arrangement constitutes further proof of the prevailing general desire to ensure expedition, which, after all, is an essential element of success in the administration of justice.

Christmas Carols.

An evening paper makes the interesting announcement that the chairman of a country bench has announced that the magistrates have given instructions to the police to stop all carol singing and playing until a week before Christmas. We quite agree that carols every night from the end of November until Christmas Eve can become monotonous and mildly annoying; and there may even be people who think carols in early December as outrageous as grouse in July, although the law deals with the one and not with the other. But we think that a generation that buys its Christmas magazines in November and its "7 o'clock" paper at five might be indulgent about a little premature carolling. We confess that, as we said, our view was that the law did not pretend to deal with the matter. In the absence of any local bye-law, we wonder what right the police or anyone else have to prescribe the days upon which carols may be sung? To sing carols is not an offence, except possibly to the ear. In certain circumstances it may be a mere pretence, so that it really amounts to begging; in others there may be obstruction; or a band may be a nuisance (in the legal sense). There may indeed be various possible statutory offences involved, but none of them, so far as we are aware, turns upon the date upon which it is committed. Does the pronouncement mean that for a week before Christmas, and no longer, the police are to wink at all these offences, if offences they be? Or is there some offence of carolling of which we are not aware? And in any case, have the magistrates any power to give orders to the police in the matter?

Sheriff Courts and Legal Officers (Scotland) Bill.

This Bill, which has been exciting a good deal of interest among Scottish members, re-enacts and amends the law with regard to the appointment of sheriff clerks and procurators fiscal in Scotland. The sheriff clerk, who corresponds in large measure to the registrar in our county courts, is appointed by the Secretary of State for Scotland, and may be required to give his whole time to the duties of the office, in which case he is to be deemed to be in the Civil Service of the State. He is removable only on a report by the Lord President of the Court of Session and the Lord Justice Clerk. The other official, the procurator fiscal, who has no exact analogue in England, is the public prosecutor in the sheriff court, for it will be remembered that the sheriff in Scotland, who to some extent corresponds to our county court judge, has an extensive jurisdiction in criminal matters, both in summary proceedings and in trials on indictment. The right of appointing to this office is vested in the Lord Advocate who may with the consent of the Treasury fix the number of procurators fiscal in Scotland and the limits of their districts. Both officials, sheriff clerk and procurator fiscal, are invariably solicitors. The sheriff clerk is a whole-time official, and is in terms precluded from practising as a solicitor. If it should happen that he is personally interested in an action tried in the court of which he is the clerk, it has been held that the right procedure is that he should not act, but that the sheriff should appoint an interim clerk in his place. Some controversy has been raised as to one or two minor matters, but the Bill, which is an extremely useful measure, is expected to be placed on the statute book before Parliament rises.

Sale of "dud" Firearms.

A point under the Firearms Act, 1920, was raised at the Marlborough Street Police Court in a recent case, when a dealer in arms was summoned under s. 2 for failing to give notice to the police of the hiring out of a firearm to a person other than a registered dealer. It was proved by the prosecution that the firearm in question was a Smith & Wesson revolver hired for theatrical purposes, and it was admitted that it was made useless by "jamming," certain essential parts being taken out, and the trigger made immovable. The police took the line that it could be restored and made an effective weapon. Alternatively, they argued that it was a part of a firearm, and therefore, within the definition in s. 12, itself a firearm. The magistrate, however, dismissed the summons, on the ground that the "firearm" was not within the definition, not being a weapon from which any shot, bullet or other missile could be discharged. He further pointed out that the words "or any part thereof" would not assist the prosecution, because they mean a part of such a weapon as would permit of the discharge of a shot, bullet, or other missile. Apart from the legal point, there seems to be very little real danger in hiring out a dismantled weapon for a specific use for a very short period. A "dud" pistol in the hand of an actor will not seriously affect the security of the State.

Inefficient Silencers.

Under the Motor Cars (Use and Construction) Order, 1904, Art. IV: "Every person driving or in charge of a motor car when used on any highway . . . (7) shall not use any cut-out, fitting or other apparatus or device which will allow the exhaust gases from the engine . . . to escape into the atmosphere without passing through a silencer, expansion chamber or other contrivance suitable and sufficient for reducing as far as may reasonably be practicable the noise which would otherwise be caused by the escape of the said gases." By the Amendment Order (No. II) of 1912 this regulation now applies to motor cycles, and it is usually in regard to the latter that offences are alleged. Pleas of guilty should not be entered in cases where (as in the cold months) engines are warmed up, on the stand, on private ground adjoining the street. The above Article (breaches of which are punishable by a fine not exceeding £10 under the Locomotives on Highways Act, 1896, s. 7) only applies to user on the highway. The latter expression probably includes standing still, so that where the engine of a car or cycle is opened up in the street before engaging the gear, a conviction could not be avoided on the plea that there was no "person driving." The person responsible would in any case probably be "in charge of" the car. The evidence of one constable is often relied on by the prosecution, but as the above subject is essentially a matter of opinion the absence of corroboration should be urged as a reason for dismissing the case. The offence being one of degree, the cross-examination should be directed to ascertain the time of the day or night, the amount of other traffic, the absence of wind, or the concentration of the sound by the presence of high buildings. The noise of a motor cycle may be heard for great distances on a still night, for example, while the same noise might attract no attention at a busy time of the day. It is doubtful whether a motorist fined the usual small amount would incur the expense, but

many convictions would apparently be quashed on the ground of uncertainty. A summons often charges the defendant that he did on a certain date use an inefficient silencer, without specifying the inefficiency or in any way following the wording of the above Article. It being unnecessary to prove intent, the prosecution are not entitled to give evidence as to dates other than that alleged in the summons. A pernicious method of evading the rule is for a witness to begin: "This having been a nightly occurrence . . ." Prompt objection should be taken to this method of introducing inadmissible evidence.

The Liability of an Architect for Negligence.

THE CASE of the *Wisbech R.D.C.* v. *Ward*, 71 SOL. J., p. 745, raised a question whether an architect, in giving an interim certificate, is acting as agent for the building owner or in a quasi-judicial capacity. If acting in a quasi-judicial character, he is not liable for negligence in respect of the giving of a certificate, but only for fraud, and fraud in the present case was not suggested. Mr. Justice SANKEY found as a fact that owing to an interim certificate negligently given the plaintiffs had paid the same sum (£221) twice over, and he ordered the defendant to pay that sum to the plaintiffs by way of damages. The learned judge distinguished *Stevenson* v. *Watson*, 4 C.P. D. 148, and *Chambers* v. *Goldthorpe*, 1901, 1 K.B. 624—in both of which cases it was held that the architect was not liable—upon the ground that in those cases the question concerned the final, and not an interim certificate. "Although it is probably right to say," observed SANKEY, J., "that in giving a final certificate the architect acts in a quasi-judicial character, unless there is some express clause to contradict it, it cannot, I think, be asserted that in giving an interim certificate he is so acting."

It may be pointed out that in neither of the earlier cases was a distinction drawn between a final and an interim certificate; the test adopted was whether the duty the architect was performing was one requiring "*the exercise of professional knowledge, skill, and judgment*," or whether the duty was a "ministerial or clerkly" one, requiring merely "arithmetical calculation." By the contract in *Wisbech R.D.C.* v. *Ward*, *supra*, no money was to become due to the contractor unless the architect so certified, and the amount certified by each monthly certificate was to be 90 per cent. of all work executed and materials delivered on the site up to the first day of the month in which payment was made. In estimating the value of the work and materials and in considering whether they were of proper standard, the architect must, it is thought, have had to exercise "professional knowledge, skill, and judgment." Applying, therefore, the test adopted in the earlier cases—a test not disputed in *Wisbech R.D.C.* v. *Ward*—it is difficult to see how the defendant was liable for negligence. "The architect," said DENMAN, J., in *Stevenson* v. *Watson*, "is an arbitrator *from the beginning to the end of the contract*. He is throughout to have his eye on the work, and give certificates from time to time, all having reference to his final certificate, and *he is from the first a person exercising judgment* on a matter on which the parties cannot exercise judgment." It seems difficult to reconcile this passage with the conclusion arrived at by Mr. Justice SANKEY.

An appeal from the above decision was heard on the 16th November and was allowed with costs. But the Court of Appeal did not find it necessary to enter upon the question of law argued in the court below, being satisfied that the plaintiff's case failed upon the facts. It did not appear that the contractors had in fact been overpaid; and, moreover, the certificates being only interim certificates, it was open to the architect to make subsequent adjustments between the parties; so that in any case the action was premature.

Some Notes on Divorce Practice.

SOME little confusion exists in the minds of many practitioners with regard to the various orders a wife can obtain against her husband in the Divorce Division for payment of money for her support.

The "money" order appended to a decree of dissolution or of nullity is termed "permanent maintenance," and that following upon a judicial separation "permanent alimony." "Periodical payments" is the name given to the maintenance obtainable by a wife after disobedience to a decree of restitution of conjugal rights. The monetary provision for the wife after petition filed and pending the hearing, where all of the above remedies are concerned, is called "alimony *pendente lite*" or alimony pending suit.

The difference between these forms of maintenance is much greater than a difference in name. For example, where there is a decree of judicial separation, a guilty wife may petition for an allotment of permanent alimony. Although on a decree of dissolution such wife is not permitted to apply for permanent maintenance. However, a wife who has been an unsuccessful respondent to a nullity suit may petition for and obtain permanent maintenance in certain circumstances. A petition for periodical payments differs from other applications for maintenance in that no statutory limit of time is imposed within which it must be presented after the pronouncement of the decree upon which it is founded, although the court has power to dismiss a hopelessly stale claim.

The most important difference between these orders is with regard to security. Neither permanent alimony nor alimony pending suit can be ordered to be secured, whereas permanent maintenance and periodical payments both permit of security. A practical illustration of the wise use of a wife's remedies is to be found in a case where she obtains a decree of restitution of conjugal rights which is disobeyed. Such disobedience constitutes statutory desertion by the husband founding in itself a petition for judicial separation. In order, however, to place the wife in the better financial position where the husband is possessed of property out of which he can find security, e.g., land, investments, etc., it is better for the wife to be contented with her restitution decree so that she may obtain an order for periodical payments which permits of security, than to proceed for judicial separation and permanent alimony which does not.

It is further to be observed that a court of first instance has decided in *Tangye* v. *Tangye*, 1914, P. 201, that any order to secure a gross or annual sum of money is unalterable. There have been developments in the practice on the basis of that decision, and it is submitted that the following position arises on a summons for an order for permanent maintenance or for periodical payments with security. If the whole amount is ordered to be secured, neither the husband nor the wife can thereafter take out a summons to vary on the ground of decrease or increase of means. If the amount is only partially secured, both sides can vary, but only as regards that part of the payment which is unsecured, the wife being able to vary proportionately up to any amount of increase, and the husband to decrease within the limits of the unsecured quantum of payment.

It follows that it is not always to the advantage of the wife to have the whole of her maintenance secured.

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(*Continued from page* 921).

(iii) *Judgment not to be contrary to natural justice.*

It is remarkable how few cases there are in which there is a direct finding by the court that the judgment sought to be enforced was "contrary to natural justice." The words, like many another fine phrase, are "good starters but seldom or never reach the winning post!" They are almost "common form" in every defence to an action on a foreign judgment; but in most cases they amount to little more than declamation. There is one case, however, in which some useful light was thrown on the subject.(22) There a ship was attached in a foreign port by the creditors of the registered owner, and proceedings were instituted for its sale. Two mortgagees intervened in these proceedings to protect their rights. The Court (of Louisiana) refused to take notice of the claim of the mortgagees as, by the law of the State, a mortgage of chattels was invalid. The ship was ordered to be sold and it finally arrived at a British port. Thereupon the mortgagees filed their bill to confirm the mortgage. It was held that the judgment of the foreign court was not binding on the courts in England, the *lex loci contractus* being ignored by that court; and, further, that the plaintiffs not having originated proceedings in the foreign court, but, on the contrary being wholly denied by it, were not estopped from proceeding here. Vice-Chancellor Wood said: "How was the comity of nations to be exercised with a tribunal holding such diametrically opposite notions as to the law of nations? How could this court recognise a Louisiana decision which sets out by ignoring altogether a contract valid at the time and place of its inception? Such a decision could no more be regarded than any law by which a foreigner might say 'for the benefit of our citizens we will utterly set at naught all regard to the title acquired between two citizens of your State.' This is in effect confiscating the property of the person armed by the law of his own country with a paramount title."

This decision was approved of by Lord Chelmsford in a later case,(23) where this same law of Louisiana was under consideration. There a British ship, mortgaged in England by a British subject to British subjects, was arrested at New Orleans by creditors of the mortgagor, also British subjects resident in England, and, as such a mortgage is not recognised by the courts of New Orleans, the mortgagees gave bonds in order to protect the ship from sale. The mortgagees afterwards filed a bill in England to restrain the creditors from suing on these bonds. It was held that as the creditors owed no duty to the mortgagees they had a right to proceed against the property of their debtor wherever they found it, and that the bill could not be maintained. The point here was that the creditors owed no duty to the mortgagees. Commenting on the law itself, the Lord Chancellor said:(24) "The law appears to be peculiar to the State of Louisiana, no such application of the law having been shown to exist in any other state or country; and it has been disapproved of by many eminent jurists. But as a law applicable to the dealings of its own citizens, whether it is the subject of positive legislation or rests only upon the decision of the courts, there is no such inherent injustice in it as 'absolutely to disentitle it to regard when brought into question in this country.'"

It has been held (25) that the fact that the parties themselves have not been allowed to give evidence is no ground for holding that a judgment is contrary to natural justice. So where a case was tried at Florence in 1911 under the rules of Italian procedure, by which neither party can give evidence, it was held that the judgment could be enforced in England. Mr. Justice Lawrence (as he then was) said that it was not possible for an English judge to hold that it was contrary to substantial justice for the Italian courts to prevent the parties giving evidence in their own behalf, for until 1846 the same rule obtained in England. "I cannot," he said, "say that Italy and other countries should be struck out of the comity of nations for doing that which was part of the evolution of English procedure."

Possibly his lordship may have had it in mind that to decide otherwise would have been to declare by implication that in the celebrated case of *Bardell* v. *Pickwick* the decision was contrary to natural justice!

The expression "contrary to natural justice" really seems to mean by a procedure which is contrary to natural justice—not that the decision itself is vicious in this respect.

In a later case (26) the question arose whether a Canadian judgment was contrary to natural justice. It appeared that a certain company in Quebec owed money to one Nutter, who assigned part of this debt to the plaintiff as security for a loan. He subsequently assigned the whole of the debt to the defendant, subject to the rights of the plaintiff, in consideration of an undertaking by the defendant to pay to the plaintiff the amount of the debt due from Nutter to him. The plaintiff sued the defendant in Canada to recover the amount of the debt. The defendant pleaded that he had been induced to enter into the undertaking by the fraudulent misrepresentation of Nutter as to the financial position of the company. The Canadian court—adopting a principle unknown to our law—held that what was said prior to the execution of the deed was inadmissible in evidence. They said: "The deed must be held to contain all the terms and conditions of the sale as the defendant had only to stipulate in the said deed that the sale was made subject to the conditions that the said debts were warranted to be good and collectable, and therefore the principle of *caveat emptor* applied."

Mr. Justice Channell, in the course of his judgment, said (27): "In any view of it, the judgment appears, according to our law, to be clearly wrong, but that, of course, is not enough (*Godard* v. *Gray*), (28) and whatever the expression 'contrary to natural justice,' which is used in so many cases, means (and there really is very little authority as to what it does mean), I think that it is not enough to say that a decision is *very* wrong, any more than it is merely to say that it is wrong. It is not enough, therefore, to say that the result works injustice in the particular case, because a wrong decision always does. So far as I can see, all the instances given of what is 'contrary to natural justice' for the purpose of preventing a foreign judgment being sued on here are instances of injustice in the mode of arriving at the result, such as deciding against a man without hearing him or without having given him any notice or the like.(29) . . . The error, if it is an error, of the colonial court here seems like a misapplication of our rule that terms agreed on during the negotiation of a contract and not inscribed in the contract when put into writing cannot be relied on except in some cases as a ground for reforming the written expression of the contract."

It is not uninteresting to mention, with respect to this particular case, that it had been set down for argument on the pleadings, and it was thus that Channell, J., came to consider it. But on appeal from his decision the Court of Appeal decided that the case should be tried in the ordinary way. When so tried it turned out that there was no evidence that the fraud (if any) of Nutter had induced the defendant to undertake payment of the debt to the plaintiff! This is one more example of the danger of trying cases by instalments!!

(22) *Liverpool Bank* v. *Foggo*, 1860, 2 L.T. 894.
(23) *Liverpool Marine Credit Co.* v. *Hunter*, 1868, 3 Ch. App. 479.
(24) At p. 483.
(25) In *Scarpetta* v. *Lowenfeld*, 1911, 27 T.L.R. 509.
(26) *Robinson* v. *Fennes*, 1913, 3 K.B. 835
(27) At p. 842.
(28) L.R. 6 Q.B. 139.
(29) See, too, *Crawley* v. *Isaacs*, 1867, 16 L.T. 529, per Bramwell, B.

The mere fact that a case would have been decided otherwise under the English rules of evidence does not show that it was contrary to natural justice.(30)

Nor does the fact that the rules as to service of process are unlike our own necessarily vitiate a judgment subsequently obtained. So where the law of a British colony provided for service of process on an absent party by service on the Attorney-General, but did not provide that he should pass on the notice to the party affected, it was held that a judgment subsequently obtained against a party who was in the jurisdiction when the cause of action accrued was not contrary to natural justice.(31)

(iv) *The judgment not to be contrary to policy of the law.*

Penalties imposed by a foreign country must be enforced in the courts of that country and not in England,(32) and the question whether a judgment is "penal" or not is for the court in this country to decide, if it is sought to enforce that judgment here.(33) In that case it appeared that by a law of the State of New York penalties were inflicted on debtors for misrepresentation—these penalties being paid to the creditors in satisfaction *pro tanto* of their debt. The New York courts had decided that actions for these penalties were criminal actions. An action being brought in Ontario on a judgment of the New York court under this statute, it was held (by the Privy Council), notwithstanding the judgment of the New York court, that these actions being by a subject to enforce in his own interest a liability for the protection of his private rights were remedial and not penal, and could be enforced in Ontario.

A judgment of a foreign court may be partly penal and partly such as will be enforced in these courts. In such a case it will be severable. In *Raulin* v. *Fischer* (34) it was sought to enforce a French judgment. By French law, where a person is prosecuted for a crime, a person who was injured by the crime may intervene in the prosecution and make a claim for damages, which is tried along with the criminal charge, and, upon conviction punishment for the offence and damages for the injury may be awarded by the same judgment. It was held that in such a case the judgment was severable, and that the portion of it awarding damages to the injured person was not within the rule of international law, which prohibits courts of justice from executing the final judgments of a foreign court, but might be enforced by action in this country.

As rates and taxes recoverable in foreign countries cannot be recovered here, it is conceived that judgments in respect of such matters would not here be enforced. In the case of *Municipal Council of Sydney* v. *Bull*,(35) for example, a rate was levied on the defendant in Sydney in respect of certain street improvements. Distress having proved ineffectual, the council brought suit in debt in England. It was held (by GRANTHAM, J.), that the liability being imposed by the foreign state solely for its own domestic purposes, the action to enforce it was analogous to an action to recover a penalty or tax, and could not lie.

This leads me to the consideration of an important question upon which even Professor DICEY has expressed a doubt. In his "Conflict of Laws," 2nd ed., p. 102, he writes: "Subject to the possible exception hereinafter mentioned, a valid foreign judgment *in personam* may be enforced by an action for the amount due under it if the judgment is (1) for a debt, or definite sum of money, and (2) final and conclusive, but not otherwise." The "possible exception" is stated at p. 414 to be: "An action (*semble*) cannot be maintained on a valid foreign judgment if the cause of action in respect of which the judgment was obtained was of such a character that it would not have supported an action in England."

(30) *Delosse Brissac* v. *Rathbone*, 30 L.J. Ex. 238; and see *Pemberton* v. *Hughes*, 1899, 1 Ch. 781.
(31) *Becquet* v. *McCarthy*, 1831, 2 B. & Ad. 951.
(32) *The Le Louis*, 1817, 2 Dod. 210.
(33) *Huntington* v. *Attrill* 1893 A. C. 150.
(34) 1911, 1 K.B. 93.
(35) 1909, 1 K.B. 7.

In *Macfarlane* v. *Macartney*,(36) Mr. Justice ASTBURY decided that a foreign judgment cannot be enforced in England, if (*a*) it is contrary to public policy—e.g., by recognising the right of an illegitimate child to perpetual maintenance against the putative father and his estate; and (*b*) if the cause of action is unknown in England—e.g., the right of a posthumous affiliation order. It appeared (according to the facts of the case) that these rights are recognised in Malta, and the effect of a Maltese judgment came to be considered in an administration action over here. Mr. Justice ASTBURY said: "The general recognition of the permanent rights of illegitimate children and their spinster mothers as recognised in Malta is contrary to the established policy of this country, especially having regard to the fact that the child's interest is not confined to minority."

In arriving at this decision ASTBURY, J., adopted and followed a rule laid down in America by WOODRUFF, J., in *De Brimont* v. *Penniman*,(37) who refused to enforce, in New York, a French judgment by which, in France, a father-in-law and mother-in-law must make an allowance to a son-in-law, so long as a child of the marriage is still living.

There is this comment to make on Mr. Justice ASTBURY'S decision, namely, that it was not really necessary for the purpose of the case, because he also found that the judgment, being in the nature of a decree for alimony was really not a final judgment.

(v) *Judgment must not be obtained by fraud or misrepresentation.*

The maxim *fraus omnia vitiat* applies in this, as it does in every other branch of English jurisprudence. So if a plaintiff, suing on a foreign judgment, applies for judgment under Ord. XIV, and is met with an affidavit to the effect that it was obtained by fraud, the defendant must have unconditional leave to defend;(38) and fraud will avail the defendant although (1) it was discovered since the judgment,(39) (2) the charge of fraud involves re-trial of the questions determined in the foreign court,(40) and (3) although the charge of fraud was investigated and rejected in the foreign court.(41) Indeed, it was decided in an old case (42) that a judgment obtained abroad by fraud will, in effect, be set aside by an English court. I have only been able to find one case in which there was even a suggestion of fraud in the tribunal, and even there the rule under which the judgment was given apparently had the sanction of the foreign law.

In *Price* v. *Dewhurst*,(43) an action had been brought in the Executors Court of Dealing in St. Croix. According to Danish law, where by a will guardians have been appointed, they may form themselves into a court for administering the property of their wards. In this case they had decided questions *for themselves*, and the validity of their judgment was questioned. The Vice-Chancellor refused to recognise the judgment.

(vi) *The court must have had jurisdiction.*

The court must have had jurisdiction over the parties and the cause of action. The following circumstances have been held or assumed to be sufficient to found jurisdiction of the foreign court:—

(*a*) *Permanent or temporary allegiance owed to the foreign Government.*

The leading case on this subject is *Schibsby* v. *Westenholy*.(44) A leading case is like a "classic": a piece of literature which everybody talks about but nobody ever reads! It may therefore be appropriate to refer to *Schibsby's Case*. The plaintiffs were Danes resident in France and the defendants were Danes resident in England. The plaintiffs obtained judgment in France—it being the law of that country that a French

(36) 1921, 1 Ch. 522.
(37) 10 Blatchford 436.
(38) *Codd* v. *Delap*, 1905, 92 L.T. 510.
(39) *Manger* v. *Cash*, 1889, 5 T.L.R. 271.
(40) *Vadala* v. *Lawes*, 1890, 25 Q.B.D. 310.
(41) *Abouloff* v. *Oppenheimer*, 1882, 10 Q.B.D. 295.
(42) *Blake* v. *Smith*, 1810, 47 E.R. 365.
(43) 8 Sim. 279.
(44) 1870, L.R. 6 Q.B. 155.

subject may sue a foreigner though not resident in France, and for this purpose an alien, if resident in France, is considered by the French law to be a French subject. Process was duly served, in accordance with French rules of procedure, in London, upon the defendants, but they never appeared and took no notice of the proceedings. It was held that the judgment so obtained could not be enforced in England. Here there was no duty to submit to the jurisdiction; no allegiance to France; no submission to the jurisdiction. Lord BLACKBURN said :(45) "If the defendants had been at the time of the judgment subjects of the country whose judgment is sought to be enforced against them, we think that its laws would have bound them. Again, if the defendants had been at the time when the suit was commenced resident in the country, so as to have the benefit of its laws protecting them or, as it is sometimes expressed, owing temporary allegiance to that country, we think that its laws would have bound them."

It is interesting to notice that in this case BLACKBURN, J., propounded the following question, namely: If at the time the obligation was contracted the defendant were within the foreign country but left it before the suit was instituted would he have been bound by the judgment? He said "we" (that is the court) "should be inclined to think the laws of the country bound them." This was a mere *obiter dictum*, which does not appear to have been followed in later cases.

So in 1894, Lord SELBORNE, giving judgment in the case of *Gurdyal Singh* v. *Faridkote*,(46) said that while territorial jurisdiction generally attaches upon all persons so long as they are either permanently or temporarily resident within the territory, it does not follow them when they have withdrawn from the territory. No territorial legislation can give jurisdiction which any foreign court ought to recognise against absent foreigners who owe no allegiance or obedience to the power which so legislates.

Neither the fact of possessing property situate in a foreign country nor the fact of entering into a contract of partnership in that country to deal with that property is sufficient to give the courts of the foreign country jurisdiction in an action *in personam* over a British subject not resident in that foreign country at the date of the action who has neither appeared to the process nor expressly agreed to submit to the jurisdiction of the foreign court.(47)

(*b*) *Residence in the foreign country.*

Residence, implying temporary allegiance, has been held to be sufficient. So where a defendant was duly served with process, while temporarily residing in a foreign country a judgment there obtained against him was enforced here.(48) But residence there must be. So a judgment obtained in New Zealand, against a man in his absence, who had not submitted to the jurisdiction cannot be enforced here,(49) although he was born in the colony.(50) The fact that he was born in a colony does not make him a "subject" of the colony so as to make him bound by a judgment given in his absence.

(*c*) *Voluntary submission to the jurisdiction.*

It is obvious that anyone who voluntarily submits to the jurisdiction of a foreign court cannot afterwards plead to that jurisdiction if an attempt is made to enforce the judgment in England. There have been a number of decisions as to what constitutes a voluntary submission. Appearance personally, or by attorney, was held so long ago as 1810, to be enough ;(51) and in 1921 it was decided that where a domiciled Englishman, a member of a firm carrying on business in Belgium, instructed counsel to appeal against a decision of the Belgian Courts, declaring the firm bankrupt, this constituted a submission to the Belgian jurisdiction.(52) A mere conditional appearance has also been held sufficient. So in *Harris* v. *Taylor* (53) a man who was not domiciled or resident in the Isle of Man appeared conditionally, and moved to set aside the writ on the ground that he was domiciled in England. His motion having failed, he took no further part in the proceedings. It was held that he had voluntarily submitted to the jurisdiction, and that the Manx judgment could be enforced in England.

But some appearances, which seem to be voluntarily entered, may not really be so. If a defendant appears to prevent his property being seized as a result of the proceedings it is voluntary—*aliter* if his property has already been seized.

In *Voinet* v. *Barrett*,(54) Lord ESHER said : (55) "An appearance is voluntary unless it is caused by the fact that property has been already seized by the foreign tribunal, for every appearance which is not made under pressure is a voluntary appearance; so that the defendants here fail to establish facts which bring them within the definition of an appearance under pressure. The mere fear that things which may be afterwards carried into the foreign country will be seized, is not pressure which will prevent an appearance being voluntary."

In *The Dupleix* (56) the owners of a British ship commenced an action *in rem*, and caused a foreign ship with which their ship had collided to be seized and held to bail. The foreign owners appeared and counter-claimed, but were held liable. It was held that their appearance was voluntary.

EVANS, P., said : (57) "An appearance not merely for the purpose of obtaining a release of property arrested, but also for the purpose of attempting to obtain a judgment freeing the defendants from all liability for a collision, and for the further purpose of trying to recover a judgment upon a counter-claim —which is equivalent to a cross-action—is not an appearance "only to save property in the hands of a foreign tribunal" or "an appearance under duress."

The question whether there was or was not a voluntary appearance was also considered in *Guiard* v. *De Clermont & Donner*,(58) in which the facts were somewhat peculiar. In effect what happened was this—the defendants, who were English merchants, were sued in Paris by a Frenchman. The defendants ignored the proceedings and allowed judgment to go against them by default for £524 14s. 9d. on 17th May, 1907. An attempt was made to enforce the judgment in France, a return of *nulla bona* being made, but in September of the same year the plaintiff secured what corresponds to a garnishee order on a sum of £4 0s. 8d., standing to the credit of the defendants at the Credit Lyonnais.

The defendants, becoming alarmed apparently, applied to have the default judgment set aside. This was done on 10th March, 1908, when the case was re-heard and decided in the defendant's favour on the merits. On appeal the French Court of Appeal decided that the lower court had no right to set aside the judgment, which was reinstated on 3rd April, 1909.(59) It was on this judgment that the defendants were sued in England. LAWRENCE, J., said the question he had to decide was whether this was a voluntary submission. He said : "What I have to consider in this case is, was the defendants' appearance caused by the seizure of their goods." It is a peculiar case in this respect, that the "opposition" contains no reference to the *saisie arret* (garnishee order), which is the only thing that can be called a seizure of goods in this case . . . This attachment was a process of execution and it was for a very small sum of money. I have to ask myself whether the proposition that an appearance is not voluntary where it is merely to save goods which have been seized is a doctrine of law, or whether it is a fact from which

(45) *Loc. cit.*, at p. 161.
(46) 1894, A.C. 670.
(47) *Emanuel* v. *Symon*, 1908, 1 K.B. 302 ; *Duflos* v. *Burlingham*, 1876, 34 L.T. 688.
(48) *Carrick* v. *Hancock*, 1895, 12 T.L.R. 59.
(49) *Turnbull* v. *Walker*, 67 L.T. 767.
(50) *Gibson* v. *Gibson*, 1913, 3 K.B. 374.
(51) *Molony* v. *Gibbons*, 1810, 2 Camp. 502.
(52) *Bergerem* v. *Marsh*, 1921, 91 L.J. K.B. 80.
(53) 1915, 2 K.B. 580.
(54) 1885, 55 L.J. Q.B. 39.
(55) At p. 41.
(56) 1902, 11 L.T. K.B. 509; 1912, p. 8.
(57) 27 T.L.R. 578.
(58) 1914, 3 K.B. 145.
(59) *Gatorian* v. *Maxwell*, 1908, *Times*, Dec, 12th, as to vol, app.

you may infer the further fact that it was involuntary. If it is a proposition of law and I ought to infer necessarily from the mere fact that there was £1 or one franc in the Credit Lyonnais that appearance was involuntary, of course the defendants were right. I do not, however, think that is what is meant. I think involuntary means what it says, that it is involuntary, and I do not think the defendants' appearance was involuntary in this case.' With the profoundest respect to the learned judge, I am unable to follow this reasoning. Suppose the attempt had been to garnish, not £4, but £4,000, would his judgments have been the same? The money garnished was (it seems to me) property seized in proceedings which, until their seizure, the defendants had ignored altogether!

(60) 1902, 71 L.J. Q.B. 509.

(*To be continued.*)

Money for Nothing.

THE case of *Chubb* v. *The North-West India Trading Company*, before ROWLATT, J., on the 8th ult., again brought under consideration the interesting question whether a contract of employment was broken by the employer ceasing to provide employment although continuing the payment of a stipulated salary. In that case the plaintiff, who was engaged under a written agreement as assistant and accountant in England to the defendant company, was notified by the managing director that all business would be stopped both in England and India. The company was incorporated in the latter country. The company's offices in England were in fact closed down and the lease of the premises disposed of. The plaintiff claimed that by their action the defendants had put it out of their power continuously to employ him upon the terms of the written agreement, and by implication had wrongfully dismissed him; he claimed damages for breach of contract and/or wrongful dismissal. The defendants denied that they had ceased to employ the plaintiff or put it out of their power to do so, or that they had dismissed him, and alleged that they had always paid him his salary. In his Lordship's opinion the question of the payment of salary without corresponding employment was irrelevant in that case, and he based his decision in favour of the plaintiff on the fact of the improbability of the company continuing payment of the plaintiff's salary month by month until 1930, the date of the termination of the contract. On the facts of the case he held that the plaintiff was faced with a proposition similar to that in which a business is put an end to and wound up; and gave judgment for the plaintiff for £350 and costs.

Counsel for the defendants, however, during his argument, submitted that there was no evidence that the company did not intend to carry out their reasonable obligations, and that, provided payment of the salary was continued, there was no guarantee to provide the plaintiff with work. He based his argument on this principle and supported his contention by reference to three cases where the decisions clearly established that, provided the salary was paid under a contract of employment, there was no obligation to provide work, and no breach of the contract in the absence of such employment. In the case of *Lagerwell* v. *Wilkinson, Henderson and Clark*, 80 L.T. 55, in consequence of bad trade, the defendants refused to allow the plaintiff, a commercial traveller, to travel in certain countries, but continued to pay him the agreed salary under his contract. The plaintiff sued for damages for the injury done to the goodwill of his trade connexion. In his judgment BIGHAM, J., said: "The defendants' obligation to the plaintiff under the contract is limited to an obligation to pay the fixed salary, an obligation which they are discharging, and are willing to continue to discharge until the contract term expires. There is no obligation to keep him travelling to enable him to preserve his so-called trade connexion." In *Turner* v. *Sawdon & Co.*, 1901, 2 K.B. 653, the same principle was upheld. A salesman was engaged under a contract for four years. Before the expiration of the contract term his employers refused to give him work, but continued to pay him his salary. It was held in an action for damages for breach of contract that there was no obligation to provide work. A. L. SMITH, M.R., said: "The real question which the plaintiff thought to raise, and which was raised, was whether beyond the question of remuneration there was a further obligation on the masters that, during the period over which the contract was to extend, they should find continuous, or at least some, employment for the plaintiff. . . . It is within the province of the master to say that he will go on paying the wages, but that he is under no obligation to provide work . . . It seems to me that the only argument open to the plaintiff was that his employment should be continuous, and I cannot find that obligation in the contract."

In the third case cited, *Turpin* v. *Victoria Palace*, 1918, 2 K.B. 539, reference was made to the two cases above mentioned, and the question of damages for loss of publicity was raised. The plaintiff was a music hall artiste who had entered into a contract with the defendants to perform at their music hall for specified periods in four successive years at a weekly salary. A point was raised whether artistes were to be considered of a similar status with other employees with reference to the obligation of the employer to provide work, and MCCARDIE, J., held that they were. He further held that under the terms of the contract there was no express or implied obligation on the defendants to allow the plaintiff to perform, their only obligation being to pay the agreed salary. As a result of these findings the claim for damages for loss of publicity could not be supported in law. It is thus clearly established that an employee under a contract may remain totally idle at the employer's expense, and cannot claim damages for implied breach of contract or for loss of skill in his particular class of work in consequence thereof.

It is important to note, however, that different considerations apply where the question of publicity is an essential element of the contract. The defendants in *Turpin* v. *Victoria Palace*, *supra*, neither expressly nor impliedly contracted that the plaintiff should be given publicity. Had MCCARDIE, J., held that an actor's profession as such placed him in a different position from that of an ordinary employee, then it might well have been that his right to publicity would have been an implied term of the agreement for breach of which damages would have been awarded. The breach of a term to secure publicity, incorporated in a contract either expressly or collaterally, as evidenced, in the case of an actor, by an undertaking to advertise him, has been held a sufficient ground for damages. The leading case on this point is now *Marbe* v. *George Edwardes* (*Daly's Theatre*) *Limited*, 43 T.L.R. 460, affirmed by the Court of Appeal, 43 T.L.R. 809. In that case, discussed 71 SOL. J., pp. 420, 612, in addition to a written contract containing the terms of an actress's engagement to appear in a certain piece to be produced in London, there was a collateral and verbal agreement that the defendants would advertise her in a prominent position. She was so advertised, but was never in fact allowed to act the part for which she was engaged. *Inter alia*, she claimed damages for loss of publicity and injury to reputation. BANKES, L.J., in the Court of Appeal said: "I think they (the authorities) do establish the proposition that in this class of employment where there is proved, in addition to the mere engagement to play a particular part, some contract which would ensure a widespread publicity, and a full opportunity of obtaining the advantages which would follow from a successful performance, the law does recognise as the proper measure of damages whatever the jury may award for this loss of publicity." The principles involved in this class of case would thus appear to be clearly distinguishable. Under a simple contract of employment the employee has no grounds whatever for

complaint if given no work under the contract, provided his salary is paid. Under a contract where publicity is an essential element, if by the terms of the contract provision is made for advertising, then for the breach of such contract an action for damages for loss of publicity will lie. It will be interesting to see in this connexion within what limits the meaning of " advertisement " will be confined.

A Conveyancer's Diary.

Open Spaces held in Undivided Shares: L.P.A., 1925, 1st Sched., Pt. V.

An important decision on the meaning of an " open space," for the purposes of the L.P.A., 1925, 1st Sched., Pt. V, was recently given by Tomlin, J., in *Re Bradford City Premises*, 1927, W.N. 307.

Three houses—numbered 72, 74 and 76—in one street were immediately before the 1st January, 1926, vested as follows:—No. 72 in S, Nos. 74 and 76 in E as the personal representative of R. At the rear of the houses was a yard and an ashes place. This yard and ashes place were, immediately before the 1st January, 1926, vested in S and E in undivided shares with rights of user in common. The question before Tomlin, J., was, in effect, how should title be made to the yard and ashes place.

The L.P.A., 1925, 1st Sched., Pt. V, para. 2, provides that where, immediately before the 1st January, 1926, " an open space of land (with or without any building used in common for the purposes of any adjoining land) " was held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof is to vest in the Public Trustee on the statutory trusts which can be executed only with the leave of the court.

The learned judge decided that the yard and ashes place were " open spaces " within the meaning of the above paragraph and had vested in the Public Trustee upon the statutory trusts and gave leave for him to sell.

There can be no doubt but that the decision may lead to inconvenience and expense in conveying areas such as those in the particular case. It will be observed that the " open space " is made by para. 2 to vest in the Public Trustee, and that there is no provision for divesting him as there is in Pt. IV. Further, even the Public Trustee cannot execute the trusts without leave obtained from the court.

In fact, there is much point in the argument, unsuccessfully advanced before the learned judge, that " it was incredible that the legislature meant anything of the kind, and that some restriction must be put on the meaning of ' open space of land ' as used in the paragraph."

The L.P.A. contains no definition of an " open space," and as Tomlin, J., observed, no assistance can be obtained from special definitions of an " open space " in particular statutes framed with particular objects in view. All will agree with the learned judge that the natural meaning of an " open space " must therefore be sought for, and that that meaning must be put on the expression for the purpose of para. 2, except so far as there is anything in the Act to restrain or extend the natural meaning.

Tomlin, J., took the view that the essential quality connoted by an open space in its natural sense is that it is " unbuilt upon," and found that there is nothing in para. 2 to extend or restrict this meaning.

With great respect, it is submitted that:—

(1) Assuming that an open space includes *prima facie* an area unbuilt upon, there is a clear indication, contained in the words in brackets in para. 2 " with or without any building," that an " open space " does not bear that meaning for the purposes of the paragraph.

(2) An open space has acquired other meanings which are quite as natural and usual as that given by Tomlin, J. Thus an " open field " is an " unenclosed field " and an " open space " might well be taken to mean an " unenclosed space or area." But it is submitted that an " open space " in ordinary parlance, at the present time, implies a space—whether open to the public or to a certain number of private individuals—which is available for certain special purposes, such as recreation or leisure, and that it would not include a piece of ground which, though not built upon, is used for private purposes, as part of the ordinary conveniences appurtenant to a dwelling-house.

If this more restricted, but at the same time natural and usual, meaning is given to " open space of land " in Part V, then there seems to be nothing in the Act to negative such a meaning.

It is submitted that it must have been this meaning of an " open space "—a meaning which would sweep in such areas as London squares—that the legislature had in view in framing Pt. V.

If an " open space " for the general purposes of the L.P.A., 1925, were to be taken to bear the meaning given to it in *Re Bradford, &c.*, then some startling results might follow; for it is provided in Pt. IV of the 1st Sched. that that part is not to apply to open spaces within the meaning of Pt. V. Hence all pieces of land which, on the 31st December, 1925, were unbuilt upon and owned and used in common by neighbours, e.g., two neighbouring farmers, might now be said to be vested in the Public Trustee, who could make title to them only with the leave of the court.

It may be that the ruling in *Re Bradford, &c.*, as to the meaning of " open space " will be treated as strictly confined to the circumstances then before the court.

Landlord and Tenant Notebook.

Remedies in Respect of Holding Over; Mesne Profits.

When claiming mesne profits, it is important to determine the exact date from which they may be claimed, since the amount of the rent and of the mesne profits may not be identical.

Mesne profits are in the nature of damages, which are awarded to the landlord or other person entitled to possession, of the land, against a person, wrongfully withholding possession thereof; and the amount of such damages or mesne profits may roughly be assessed as the annual value of the land in question.

Where a tenancy has been duly determined by notice to quit and the tenant refuses to give up possession, and wrongfully holds over, the date from which mesne profits should be claimed will clearly be the date on which the notice to quit expired, and the relationship of landlord and tenant came to an end. It should be noted, however, that there may be other remedies available to the landlord in such cases, and that a claim for *double rent* or *double value*, may be preferred, according as the notice has been given respectively by the tenant or the landlord. Under the Distress for Rent Act, 1737, a landlord is entitled to claim double the rent payable where the tenant himself gives notice to determine the tenancy, and subsequently holds over on the expiry of such notice. It is immaterial in such cases whether the notice to quit given by the tenant is verbal or in writing or whether or not the tenant holds over contumaciously.

The Rents Acts moreover do not affect claims for double rent. Inasmuch as double rent is in the nature of a penalty and not of rent, it has been held that a landlord is not debarred from claiming double rent: *Flannagan* v. *Shaw*, 1920, 3 K.B. 96). The effect of the Rent Acts on " double value " is, however, entirely the opposite. A landlord is entitled under the ordinary law to double value, where he himself has determined the tenancy, by notice *in writing*, and where the tenant has held over *wilfully and contumaciously* so that double value

differs from double rent in these two important aspects. The reason why double value cannot be claimed, where the premises are within the Rent Acts will therefore be appreciated, since a tenant holding over as statutory tenant, holds over as of right and not contumaciously, so that a claim for double value in such circumstances is misconceived: *Crook* v. *Whitbread*, 35 T.L.R. 522.

To return to the question of mesne profits, and to consider now the date from which the mesne profits are to be claimed where the tenancy has been determined by forfeiture for breach of condition. On this point the authority to be considered is *Elliott* v. *Boynton*, 1924, 1 Ch. 236, the principle established by this case being that the material date is not the date of the breach of condition on which the forfeiture is based, but the date of the issue of the writ. This judgment is to be explained on the footing that as mesne profits are awarded as from the date when the defendant ceases to hold the premises as tenant, they can accordingly be claimed only from the date of the writ, that being the date on which the lessor unequivocally evidences his intention to take advantage of the breach of condition, and to determine the relationship of landlord and tenant, which must, notwithstanding, be regarded as subsisting until such date (i.e., the date of the issue of the writ).

Our County Court Letter.

MANUFACTURER'S LIABILITY FOR A DEFECTIVE ARTICLE.

A DECISION of the Court of Appeal is urgently required on the above subject. Take the case of a maid injured by the collapse of a pair of steps, the impoverished mistress not being insured under the Workmen's Compensation Act, and the tradesman from whom the steps were bought being an undischarged bankrupt carrying on business under his wife's name. Can the maid sue the manufacturer? In *George* v. *Skivington*, L.R. 5 Ex. 1, the plaintiff bought a hair wash for the use of his wife, as the defendant knew. The ingredients were known only to the defendant, a chemist, and were warranted to be "fit and proper to be used for washing the hair." The husband, who bought the article, and the wife, who was injured by it, were held to be entitled to damages. The cause of action was based not upon contract, but upon negligence in the manufacture of the article, whereby it proved to be unfit for the purpose for which it was sold. In *Dominion Natural Gas Co. Ltd.* v. *Collins*, 1909, A.C. 640, the Privy Council referred with approval to the American case of *Thomas* v. *Winchester*, 6 N.Y.R. 397. The plaintiff was a retail chemist, who bought from the defendant, a wholesale chemist, what purported to be extract of dandelion. It had been so labelled by the negligence of the defendant's employees, and was really extract of belladonna. The plaintiff sold it to a doctor, who passed it on to one of his patients. It was held that the patient was entitled to recover damages for his injuries from the wholesale chemist. In both the above cases, however, the seller of the goods was also the manufacturer. Neither case is therefore a direct authority for saying that if a pair of steps are bought in a shop, and prove to be defective, the manufacturers are liable.

A case in which several intermediate parties were between the person injured and the provider of the article, was *Heaven* v. *Pender*, 11 Q.B.D. 503. The plaintiff was a workman employed by a painter, who had contracted with a ship-owner to paint a ship in a dry dock. The owner of the dock (the defendant) had put round the ship a staging which collapsed and injured the plaintiff. The latter was held entitled to recover damages from the dock-owner, but it will be observed that the defective article was in use on the premises of the defendant. It might therefore be regarded as a concealed trap, imposing liability on the occupier under the rule in *Indermaur* v. *Dames*, L.R. 2 C.P. 311. The manufacturer was held to be not liable in *Blacker* v. *Lake & Elliot, Ltd.*, 106 L.T. 533. The plaintiff, a cycle maker, had used a compressed air brazing lamp for twelve months, after which it burst while in use and inflicted severe burns. The lamp had been bought in a shop, and there was no privity of contract between the parties. In the Watford County Court the jury awarded the plaintiff £100 damages, but the Divisional Court entered judgment for the defendants. Lord SUMNER (then HAMILTON, J.) reviewed the cases exhaustively, and pointed out that the defendants did not know their lamp was not perfectly safe, and had no reason to believe that it was not so. In the absence of any negligence by the defendants, they were therefore not liable. LUSH, J., concurred. The court was unable to overrule, but dissented from *George* v. *Skivington*, above. In *Bates* v. *Batey & Co.* 1913, 3 K.B. 351, an infant plaintiff, aged twelve, bought from a retailer a bottle of ginger beer made and bottled by the defendants, who had bought the bottle elsewhere. The bottle burst while being opened, and destroyed the sight of one of the plaintiff's eyes. HORRIDGE, J., held that the bottle of ginger beer (inasmuch as the jury found the bottle was defective) was a dangerous thing, but that the defendants did not know of the defect, although by the exercise of reasonable care they might have discovered it. The learned judge followed *Longmeid* v. *Holliday*, L.R. 6 Ex. 761, and held that (even though the defect was discoverable by the exercise of ordinary care) the defendants were not liable, apart from contract, as they in fact had no actual knowledge. The weight of recent authority is therefore against the contention that the maid, in the supposed case above, would have any right of action against the manufacturers.

Obituary.

SIR W. W. RUTHERFORD, Bart.

Sir William Watson Rutherford, Bart., J.P., for many years a prominent Liverpool solicitor, died at his London residence, 49 Stanhope-gardens, S.W.7, on Saturday last, in his seventy-fifth year. Born at Liverpool in 1853, he was educated at Merchant Taylor's School, Great Crosby, and was admitted a solicitor in 1875, when he joined the firm of Miller, Peel Hughes & Rutherford, becoming, on the death of Alderman John Hughes, head of the well-known firm of Rutherfords, of 43 Castle-street, Liverpool, and 48 Cannon-street, E.C. Sir William devoted a considerable amount of time to the public service; he entered the City Council in 1895 and was elected Lord Mayor in 1902. Seeking Parliamentary honours he was elected for the West Derby Division of Liverpool in 1903. He resigned his membership of the City Council in 1913, was knighted in 1918, and created a Baronet in 1923 when he retired from Parliament and acquired a residence at Nice. He is survived by three daughters and one son, Councillor John Hughes Rutherford, LL.B., solicitor, who now succeeds to the title. The new Baronet is a partner in the firm of Rutherfords, was educated at Rugby and Liverpool University and served as a Captain in the 14th Battalion The King's (Liverpool) Regiment, and has been a member of the City Council during the past five years. H.

Reviews.

Introduction to the Law of Scotland. By WILLIAM MURRAY GLOAG, K.C., LL.D., Professor of Law in the University of Glasgow, and ROBERT CANDLISH HENDERSON, K.C., LL.B., Professor of Scots Law in the University of Edinburgh. Edinburgh: W. Green & Son, Ltd. xliii and 623 pp. 42s. net.

Till now Scottish law students have been nurtured for the most part on Erskine's "Principles"—"little Erskine" as

the work was called in contradistinction to the same writer's "Institute"—which, although an excellent treatise on the law of Scotland when it was first published in 1754, necessarily required a vast amount of annotation to make it even fairly serviceable for the present day; indeed, in its latest editions, it had been edited out of all recognition and was anything but an ideal student's book. We are glad, therefore, that the learned authors of the present treatise resisted the idea of a new issue of Erskine and decided on the preparation of a fresh work. The result, as it lies before us, eminently justifies their determination. Presenting, as it does, within the compass of a single volume an admirably clear and fairly detailed view of well nigh the whole law of Scotland, it should receive a hearty welcome from all who are now preparing themselves for entering the legal profession in Scotland, for whom, of course, it is primarily intended; but even those who are no longer students in the technical sense will find it an excellent and thoroughly up-to-date compendium. English lawyers may also find it profitable to consult it, especially on such subjects in which the law is substantially the same in both countries. For example, the several chapters in which the subject of contract is dealt with, and those, too, on bills of exchange, sale of goods, partnership, insurance and carriage by land and sea, make excellent reading both for Scots and English students and practitioners. Where the laws of the two countries differ, attention is called to the fact. For example, the law of Scotland rejects consideration as an essential ingredient in contract, but, while this is so, the authors are careful to point out that a gratuitous promise and a mutual contract do not stand in all respects upon the same footing. Thus, the fact that two persons have agreed to enter into an onerous contract may be proved by any evidence, but in the other case, that of a gratuitous promise, the mode of proof is limited to a writing of the party who made the promise or by an admission by him on reference to his oath. We observe, too, that on the subject of error as to identity of the person purporting to enter into a contract, the authors do not accept as good law in Scotland the decision of Horridge, J., in *Phillips* v. *Brooks*, 1919, 2 K.B. 243; indeed, there are those who doubt its soundness in England. It certainly seems quite irreconcilable with the Scottish decision, cited by the authors, of *Morrisson* v. *Robertson*, 1908, S.C. 332, which, unfortunately, was not called to the attention of Horridge, J., in *Phillips* v. *Brooks*. But it is not only in the chapters dealing with mercantile law that English lawyers may find this a profitable work of reference; they will find it almost equally valuable to consult on the subject which Scots lawyers treat under the heading "Reparation" and English writers deal with under the title "Torts." Here again there is much similarity between the laws of the two countries, and, again, where different views have been expressed north and south of the Tweed these are clearly indicated.

Throughout the book we have found practically nothing to question, but possibly exception should be taken to the statement on page 9 that "a writer on law is not in any proper sense an authority during his lifetime, unless he is raised to the Bench." In England the idea that a treatise becomes authoritative on its author being made a judge was repudiated by Lord Justice Fry in the preface to one of the editions of his standard work on "Specific Performance," and, if we are not mistaken, Lord Fraser of the Scots Bench must have held the same view, for, when counsel was on one occasion citing to that very learned judge his great work on "Husband and Wife,'" with the remark, "Your lordship says so and so," Lord Fraser quietly interposed, "Do not say I say so and so; you may say if you like that the author of that work says it." Of typographical errors we have detected very few. On page 351 the name of Chief Justice Erle is misspelt, so too is that of Lord Justice-Clerk Moncreiff on page 353. But these are trifling matters. We heartily commend this book as by far the best introduction to the study of Scots law yet published. A word should be added in praise of the attractive form of the work, printing and general get-up being alike excellent.

Reminders for Conveyancers. By Herbert M. Broughton, of the Inner Temple, Barrister-at-Law. Fifth edition, xv and 109 pp. London: Field Press, Ltd., "Law Times" Office, Breams-buildings, E.C.4. 3s. 6d. net.

The last edition of this well-known little book having been published in 1912, the present is the first since the new Property Acts, in the light of which it has been revised. It is packed full of information useful to a conveyancer in a highly-compressed form, and may be regarded as a valuable aid to memory in a profession where such a mass of details requires attention. There is a table of cases, but not of statutes, which might have been helpful. In the formidable task of re-modelling the book, possibly a few obsolete "reminders" have not been weeded out, e.g., p. 16, No. 74 (*a*), as to the question whether trustees' powers of sale have arisen, which, having regard to the L.P.A., 1925, ss. 34–36, and the transitional provisions, can hardly ever be applicable, since they are now almost invariably trustees for sale. Again, reference to authority is sometimes omitted when it would be useful, as to the A.E.A., 1925, s. 36 (8), in respect of conveyance by an administrator when the purchaser has notice that debts are paid (p. 8, point 48 (*h*)). On the whole, however, the information given is accurate, and there can be no doubt of its utility.

Books Received.

England's Privat-und Handelsrecht. II. Arthur Curti. Medium 8vo. pp. xx and (with Index) 398. 1927. Verlag Julius Springer, Berlin. R.M.19.—; gebunden R.M.20.50.

Digest of Justiciary Cases, 1868-1925, consisting of the Title Justiciary reprinted from the Faculty Digest, with an Appendix containing all decisions from other Titles in the Digest and the Supplementary Digest affecting Justiciary Practice. Medium 8vo. pp. 906 (with Index). Published for the Faculty of Advocates by William Hodge & Company, Ltd., Edinburgh and Glasgow. 42s. net.

Index to the Statutory Rules and Orders in force on 31st August, 1927, showing the Statutory Powers under which they are made. Eleventh Edition. 1927. Medium 8vo. pp. vi and 921. H.M. Stationery Office. £1 15s. net.

A Concise Treatise on The Law of Wills. Sir Henry S. Theobald, K.C. Eighth Edition. With a short collection of Precedents. J. R. Stirling, M.A., Barrister-at-law. October, 1927. Medium 8vo. pp. cxxvii and (with Index) 1151. Stevens & Sons Limited, Chancery-lane. £2 10s. net.

Moore's Practical Agreements, with Variations and Notes. Eighth Edition. F. W. Pearson, M.A. (Oxon), LL.B. (Lond.), B.C.L., Barrister-at-law. Demy 8vo. pp. xliii, 478 and (Index) 75. 1928. Butterworth & Co. (Publishers), Limited, Bell-yard. 25s. net.

The Annual Practice, 1928, being a collection of the Statutes, Orders and Rules relating to the General Practice Procedure and Jurisdiction of the Supreme Court with Notes &c. G. A. King and W. Valentine Ball, Masters of the Supreme Court, assisted by F. C. Watmough, Barrister-at-law and F. E. W. Nicholls. Demy 8vo. Forty-sixth Annual Issue. pp. ccccxxii, 2541 and (with Index) 422. Sweet & Maxwell Limited, and Stevens & Sons Limited, Chancery-lane, W.C.2. 40s. net.

THE MIDDLESEX HOSPITAL.

When called upon to advise as to Legacies, please do not forget the Claims of the Middlesex Hospital, Which is urgently in need of Funds for its Humane Work.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

SETTLED LAND—DEATH OF TENANT FOR LIFE—TITLE.

1052. *Q.* In 1901 real property was conveyed by A to A and B to the use of C for life, and on the death of C to the use of A and B as tenants in common in equal shares. B died about nine years ago, leaving a wife and children. C died in January, 1926, leaving a will of which A is the sole executor. There were no trustees of the settlement. On the 1st January, 1926, the property vested in C as tenant for life, but no vesting deed was executed.

(1) It would appear that A is beneficially entitled to one-half share in the property, and that the remaining one-half share should be held in trust for the children of B, subject to dower, to which B's widow, who is still living, is entitled.

(2) It is assumed that A, as the special personal representative of C, will have to take out a grant limited to the settled land and then give a vesting assent.

(3) In whom and in what manner should the property now be vested ?

(4) Will trustees have to be appointed in respect of the share of the children of B ?

(5) Has the special representative any power of sale ? If not, and it is desired to sell the property, what is the best method of dealing with it ?

A. (1) Since B was not in possession of the property when he died, but was only entitled to a reversionary moiety, his widow (assuming he died intestate) was not entitled to dower, and his heir would be entitled.

2) Since there were no trustees for the purposes of the S.L.A., 1882 to 1890, and are none for the purposes of the S.L.A., 1925, there are no persons who could claim to be entitled to the special grant under the A.E.A., 1925, s. 22 (1). It will, however, be open to the probate authorities to make the grant to A, and, if they do so, he will be entitled to assent to the devolution of the land. But the assent will not be a " vesting assent " as the term is used in, for example, the S.L.A., 1925, s. 8 (4) (*b*), because the land ceased to be settled land on the death of C.

(3) A should pay or provide for the death duties on C's death (for which he is liable) and then assent or convey to A and B's heir, with the result that they will hold on trust for sale.

(4) There was no conversion, so the heir takes on B's intestacy.

(5) Yes, see L.P.A., 1925, 1st Sched., Pt. IV, para. 2, and s. 35. See also answer to *Q.* 889, p. 632, *ante*, and references there given.

LEASE—CHARGE BY WAY OF LEGAL MORTGAGE—WHETHER ASSIGNMENT OR UNDERLEASE WITHIN COVENANT TO REGISTER.

1053. *Q.* A lease of 1898 contains a covenant by the lessees as follows: " and also that notice of all assignments and underleases of the demised premises shall be left by the lessees at the office of the solicitors for the lessor for registration." A charge by way of legal mortgage in the form given in Precedent 2 (Mortgages) of " Key & Elphinstone " has just been executed by the lessees. Has this charge to be registered with the lessor's solicitors as assignment of the term ?

A. The answer is in the negative, see *Q.* 444, p. 927, vol. 70, quoting *Gentle* v. *Faulkner*, 1900, 2 Q.B. 267. See also *Q.* 874, p. 603, from which it appears that the Council of the Law Society has similarly advised.

SETTLED LAND—DEATH OF TENANT FOR LIFE—PROCEDURE—TITLE.

1054. *Q.* A, by his will dated in April, 1908, after appointing two executors, gave, all his real and personal estate unto his trustees upon trust to permit his wife to have the use and enjoyment thereof during her life and widowhood, and thereafter for division equally between testator's nephews. Testator died in June, 1908, and the will was proved in August. Both executors are dead. Testator's widow is now dead—recently—and it is desired to sell the property and distribute the residue of the estate. The last surviving executor made a will leaving his widow sole executrix (who is still alive.) Can this lady appoint new trustees of A's will, and when so appointed, should such trustees execute a vesting deed vesting in themselves the residue of A's property in themselves, or should the appointment also vest the legal estate in the new trustees ?

A. The legal estate in fee simple in the property vested in A's widow (assuming she did not die until after 1925) by virtue of L.P.A., 1925, 1st Sched., Pt. II, paras. 3, 5, 6 (*c*). There is some slight doubt as to whether the executrix of the last surviving trustee was the S.L.A. trustee of the settlement at the death of A's widow. In the circumstance the best course is for her to renounce her right (if any) and for the general representatives of A's widow to obtain representation with respect to the settled land (see Ad. of E.A., 1925 s. 22) Jud. A., 1925, s. 162). These general representatives can then sell the property and distribute the proceeds or they can assent to not more than four of the beneficiaries upon trust for sale, and they can make title. The doubt referred to has now been resolved: *Re the Estate of John and Amelia Gibbings*, 71 SOL. J. 911. But the doubt as to whether the land is settled land still remains. See "A Conveyancer's Diary," 71 SOL. J., 891. The plan advised meets this doubt also.

SETTLED LAND—TENANT FOR LIFE OR DURING WIDOWHOOD—RE-MARRIAGE—VESTING.

1055. *Q.* With reference to *Q.* 1053, the widow died in December, 1926, and according to A's will she was tenant for life during her lifetime and so long as she did not re-marry I understand that after A's death she married (whether or not the marriage is valid I do not know), and she and M continued to live in the property until her death. If legally married to M., did she not on such marriage cease to be tenant for life, seeing that her estate in the property under A's will became determinable on her re-marriage, and if so, would not the legal estate at once vest in the executrix of the surviving executor of A's will ?

A. It seems from these further particulars that the widow was not entitled to the property as tenant for life at the commencement of the L.P.A., 1925, but that the person who was then executor or trustee of A's will held the land in trust for persons entitled in undivided shares (assuming that the trust was for division amongst the beneficiaries and not in trust for sale). In any case now the trustee or executor of A holds the land upon trust for sale, either by virtue of the express provisions of A's will or of the L.P.A., 1925, 1st Sched., Pt. IV. The executrix of the last surviving executor or trustee seems to be the executrix (Ad. of E.A., 1925, s. 7) or can exercise the powers of a trustee (T.A., 1925, s. 18). She can sell as executrix of A's will or after appointing new trustees or another trustee to act with her, can sell as trustee

for sale. The latter course seems the more advisable to follow.

SEPARATION AGREEMENT.—EFFECT.

1056. *Q.* The husband and wife have been married for about three years and have one child, aged two, both are English subjects and have been living in America. A year ago the husband sent his wife and child to England for twelve months' holiday, and has sent the wife her usual allowance. The twelve months have now expired and the wife has received a letter from her husband in America stating that he wants his freedom and his child, giving the reason that he thinks that they would be better separated, as their temperaments differ. The husband is in receipt of a salary of £13 a week in America, and would be quite willing to enter into a mutual deed of separation.

(1) If the husband enters into this mutual deed of separation and after some time commits a breach of the agreement, what is the wife's remedy against her husband in America, since he is out of the jurisdiction of the English courts? Can arrears of maintenance for the wife and child, or specified damages for breach of contract, be sued for as an ordinary debt, and proceedings instituted either in England and enforced in America, or in America itself, for the recovery of such arrears of maintenance or specified damages, while the wife and child are still in England?

(2) If they enter into a mutual deed of separation and they cannot agree as to who shall have the custody of the child, who would be legally entitled to the child?

(3) Can legal proceedings for a separation be instituted in England and enforced in America, on the ground that the husband will consent to such separation, or in any circumstances?

A. (1) Proceedings could be taken in England by writ of summons for the amount covenanted to be paid by a deed of separation, provided the case came within the provisions of Ord. 11, r. 1, as to leave for service out of the jurisdiction. As to this, see r. 1 (*c*) or 1 (*e*). The deed should provide that it is to be governed by English law, and that the payments are to be made in England. Whether the English judgment would be enforceable in America is a question depending on the law of the particular American State or country in which the husband resides.

(2) By the common law the father has the right to the custody of the child, see "Eversley on Domestic Relations," 4th ed., p. 489, and cases there cited. But he can obtain actual custody only by legal proceedings in England (while wife and child remain here), and by s. 1 of the Guardianship of Infants Act, 1925, his common law right would not assist him in such proceedings. It is exceedingly unlikely that any English court would take from the mother the custody of such a very young child.

(3) Where the husband is domiciled, although not resident, in England at the commencement of a suit, the court has jurisdiction to decree a judicial separation to the wife: *Eustace* v. *Eustace*, 1924, P. 45; 39 T.L.R. 687. Where the respondent is neither domiciled nor resident within the jurisdiction at the time of his citation or the institution of the suit, the English court has no jurisdiction: *Graham* v. *Graham*, 1923, P. 31, In proceedings for divorce, the parties cannot by consent, either express or implied, confer jurisdiction where the court has no jurisdiction: *Armitage* v. *Att.-Gen.*; *Gillig* v. *Gillig*, 1906, P. 135. Divorce proceedings are of a semi-criminal character affecting the status of the individual, and though judicial separation does affect status it would not appear that there are such strong reasons for the court to refuse to entertain a petition for judicial separation on account of jurisdiction if the respondent has appeared without protest: *Garstin* v. *de Garston*, 1865, 34 L.J.P. 45.

REPRESENTATION—CHAIN OF REPRESENTATION BROKEN—ADMINISTRATION *de bonis non.*

1057. *Q.* J.K., by his will proved in 1925, left all his property to P.K., his wife, for life, and then to G.C., his executor and trustee, for division among J.K.'s children. G.C. renounced and P.K. obtained letters of administration with the will annexed and died in 1926 leaving a will. What steps are necessary to obtain representation of J.K.'s settled realty and personalty?

A. Letters of administration *de bonis non* to the estate of J.K. must be applied for. The chain of representation has been broken by the failure of G.C. to prove the will; see Ad. of E.A., 1925, s. 7.

UNDIVIDED SHARES—DECLARATION OF TRUST—VESTING—ONE TRUSTEE FOR SALE.

1058. *Q.* In September, 1901, A executed a declaration of trust of leasehold property held by her for a term of 999 years. The trusts were for her parents for their lives, and subject thereto, upon trust for herself and her four brothers and sisters, B, C, D and E, and their respective executors administrators and assigns, in equal shares as tenants in common. The property was at the date of the declaration and still is subject to a mortgage. The declaration contains an express power of sale and also power to mortgage. Both of A's parents died more than ten years ago. Prior to 31st December, 1925, B purchased C's share and sold his own and C's share to F. None of the shares are mortgaged. On 1st January, 1926, A held the property (subject to the mortgage), upon trust for herself, her brother, D, her sister, E, and F in equal shares. Is the property still vested in A (subject, of course, to the mortgage) or did it vest in A, D, E and F upon the statutory trusts? If the property is still vested in A, is it necessary or advisable to appoint additional trustees to act jointly with A? Does L.P.A., 1925, s. 27 (2), apply? There is no present intention of either selling or mortgaging the property.

A. This case falls within L.P.A., 1925, 1st Sched., Pt. II, para. 1 (1) (*b*), and so A now holds the land upon the statutory trusts. It is not absolutely necessary for her (as no transaction involving receipt of proceeds of sale or capital money is at present contemplated) to appoint an additional trustee. Further, she must observe the wishes of the beneficiaries: L.P.A., 1925, s. 27 (2), as amended. It is, however, advisable to appoint one or more (not exceeding three) persons to act with her.

UNDIVIDED SHARES—DEVISE IN UNDIVIDED SHARES—EFFECT—L.P.A., 1925, s. 34 (3).

1059. *Q.* Testator, A, who died in 1926, by his will gave certain freehold property in trust for his three daughters, B, C, and D, in fee simple in equal shares. Under L.P.A., 1925, s. 34 (3), this operates as a devise to the trustees of the will for the purposes of the S.L.A., 1925, upon the statutory trusts. The trustees of the will were not expressly or impliedly appointed to be trustees for the purposes of the S.L.A., but they became such presumably under S.L.A., 1925, s. 30 (3). B, C and D wish to sell.

(1) Does the property devised as above vest in the trustees of the will by virtue of L.P.A., 1925, s. 34 (3); or

(2) Is a vesting deed required to be executed by the personal representatives to themselves as trustees before they can sell?

(3) If so, can you give reference to a precedent?

(4) Can the personal representatives sell as such instead of selling as trustees?

A. (1) Yes.

(2) and (3) The land is not settled, and there is therefore no question of the execution of a vesting deed.

(4) Yes, or they can assent in writing to the vesting of the property in themselves upon the statutory trusts and sell as trustees for sale.

LAND CHARGES—REGISTRATION—ESTATE CONTRACT—AGREEMENT FOR A LEASE.

1060. *Q.* Is it necessary to register an agreement for a lease against the prospective lessor as an "estate contract" under the L.C.A., 1925 ?

A. It is not absolutely necessary, but it is advisable if it is not intended to complete the transaction by the execution of a lease in the near future.

LAND CHARGES—REGISTRATION—MORTGAGE OF A BUILDING AGREEMENT.

1061. *Q.* Is it necessary to register a building mortgage of a building agreement against the borrower, and does it make any difference if the building mortgage is by assignment of the building agreement, or is merely an equitable charge thereon ? Such building mortgage would appear to be an "equitable charge" (Class C (iii), L.C.A., 1925). The difficulty appears to be, that when filling up the requisite form, the directions read : "Insert . . . the name . . . of the Estate Owner as defined by the L.P.A., 1925." In that Act an estate owner is defined as "the owner of a legal estate" ; but here the borrower is merely the holder of an agreement for a lease, and therefore does not come within that definition ?

A. A land charge seems registrable in respect of the building mortgage either under Class C (iii) or more probably under Class C (iv). Registration seems possible in such a case only against the estate owner, i.e., the lessor. Registration in such a case seems to constitute notice for all purposes, including priority and so a notice to the lessor under L.P.A., s. 137, seems unnecessary. See further "A Conveyancer's Diary," 71 SOL. J., p. 774.

COPYHOLDS—EXTINGUISHMENT AGREEMENT—STEWARD'S COMPENSATION AND COSTS.

1062. *Q.* I am acting for the tenant of a manor in connexion with the extinguishment of the Manorial Incidents saved by Pt. V of the L.P.A., 1922. Terms have been agreed and a draft agreement has been submitted for my approval on behalf of the tenant. The steward however, insists that the sum stated as compensation in the agreement shall be the compensation payable to the lord only, and shall not include the sum payable to him (the steward) for his compensation and costs. The lord will execute the agreement, and the steward proposes to hand over his (the steward's) separate receipt for his compensation and costs. In view of L.P.A., 1922, ss. 139 (1) (iv), 138 (8), (11), is the tenant quite safe in completing the matter in this way, and particularly will the tenant get a good discharge for the steward's compensation and costs ?

A. It seems clear from L.P.A., 1922, s. 139 (1) (iv), that the steward's compensation forms part of the compensation payable to the lord, and that the lord or the person effecting the compensation agreement is the proper person to give a receipt for such compensation. The proper course is for the steward's compensation to be included in the agreement. The opinion here given is that the steward has no right to insist on the exclusion of his compensation from the agreement. The compensation agreement is a matter between the lord or person effecting it and the tenant. Support is given to this view by the following note from 1 Wolst. & Cherry, p. 39 : "When once the amount of the compensation is fixed, the steward must look to the lord for payment, the tenant is not concerned to see that the steward obtains compensation." It is to be observed that though the *costs* of the lord form part of the compensation for extinguishment (see Man. Incid. Ext. Rules, 1925, r. 9 (2)), there is no such provision as to the costs of the steward and as costs are to fall on the tenant (L.P.A., 1925, s. 140 (*d*)), it seems therefore that a separate agreement can be made with respect to them. It is advisable however to have one comprehensive agreement and to follow the skeleton agreement contained in L.P.A., 1922, 13th Sched.

INCOME TAX.

1063. *Q.* Section 33, sub-s. (1), of the Finance Act, 1926, enacts that where a person has in any trade, etc., carried on by him sustained a loss in respect of which relief has not been wholly given under s. 34 of the Income Tax Act, 1918, or under any other provision of the Income Tax Acts, he may claim that any portion of the loss for which relief has not been so given shall be carried forward and deducted from or set off against the amount of profits or gains on which he is assessed under Sched. D in respect of that trade, etc., for the six following years of assessment, and sub-s. (5) enacts that the provisions of this section shall extend so as to apply to a loss sustained in the year ending on 5th April, 1927.

(1) It is presumed that this sub-s. (5) does not in any way curtail the provisions of sub-s. (1), but is an extension of it so as to include losses up to 5th April, 1927, but *not* so as to confine it to losses made in the year 1926-7. Is this so ?

(2) A. & Co., Limited, are a company carrying on business. For the year to 31st March, 1925, they made a profit of £4,500, for the year to 31st March, 1926, they made a loss of £1,600, and for the year to 31st March, 1927, they made a further loss of £4,400.

No claim for relief for the year 1925-6 in respect of the £1,600 was made under the Income Tax Act, 1918, s. 34, until 12th April, 1927, when the inspector disallowed it as being out of date for relief under that Act. Can A. & Co., Limited, now claim to have the loss for the year 1925-6 of £1,600 carried forward under s. 33 (1) of the Finance Act, 1926, quoted above and set off against future profits ?

A. (1) In our opinion, the assessments that are affected by s. 33 (1) are those for the years 1927-28 and the following years ; but by s. 33 (5) a special extension is made to losses sustained in the year 1926-7, but not in earlier years.

(2) In our opinion, A. & Co. cannot claim to have the loss for the year 1925-26 carried forward under s. 33 (1) of the Finance Act, 1926, because in the view we take (above in (1)), s. 33 (1) does not apply to losses incurred in any year earlier than 1926-27.

SETTLED LAND—POST-1925 SETTLEMENT—DEATH OF TENANT FOR LIFE—TITLE.

1064. *Q.* A testatrix, A, by will dated in June, 1925, appointed B and C executors and trustees thereof, and after disposing of her personal estate devised unto B and C in fee simple a freehold dwelling-house upon trust to repair and insure and generally to manage the same as absolute owners thereof, and then to permit D (A's husband) to have the use of the said dwelling-house for such a period as the trustees or trustee, in their absolute discretion, considered necessary for his personal enjoyment and use, D recouping the trustees and paying all outgoings in respect of the same during the time he should have the use of the same ; and when the trustees or trustee should in their own discretion think that the said dwelling-house was no longer necessary for D's use and enjoyment, *or when D should die*, then the testatrix *directed* the trustee or trustees to sell. A died in October, 1926, and the will was proved by B and C in November, 1926. D died in May last and B and C have now contracted to sell the house *as trustees* to a client of ours. D occupied the house, with the permission of B and C, to the time of his death. Was D a tenant for life or a person having the powers of a tenant for life within the meaning of the S.L.A., 1925 ? If so, it is presumed that a special grant must be taken out by B and C followed by a vesting assent. Attention is drawn to a case upon the point under the old law—*Re Boyer*, 1916, 2 Ch. 204. If not, is the word "directed" sufficient to amount to a binding trust for sale, and would the purchaser be better advised to take a title from B and C under such trust for sale, or from them as statutory owners, or as executors, or in any other way ?

A. It is assumed that the executors of A did not execute a vesting assent in favour of D. If that assumption is correct,

then, whether D was tenant for life or not, he had not the legal estate in the land vested in him, and no special grant is necessary. On the death of D an immediate binding trust for sale arose (subject to the purposes of administration, if any, outstanding in respect of A's estate). Hence B and C can, if they desire to make title as trustees, assent in writing to the vesting of the property in themselves upon trust for sale. But there seems to be nothing to prevent their selling as personal representatives of A, reciting that they have made no previous assent; in fact, this seems the best course in the circumstances.

Privy Council.

City of Halifax *v.* Estate of J. P. Fairbanks and Another.

18th October.

CANADA—HALIFAX CITY CHARTER—TAXATION OF BUSINESS PREMISES—DIRECT OR INDIRECT TAXATION—PREMISES IN OCCUPATION OF CROWN—ULTIMATE INCIDENCE OF TAX—BRITISH NORTH AMERICA ACT, 1867, s. 92.

By the Halifax City Charter a tax was imposed on the occupier of business premises and where the property was let to the Crown (as was the case here) the owner of the premises was to be rated and assessed for the tax.

Held, that the tax was intra vires *being "direct taxation" within s.* 92 (2) *of the British North America Act,* 1867.

Held, also, that the premises were not free from the tax on the ground that the occupation by the Crown could not be held to be for purposes of gain.

Montreal City *v.* Att.-Gen. for Canada, 1923, A.C. 136, *followed.*

This was an appeal from the Supreme Court of Canada reversing a judgment of the Supreme Court of Nova Scotia. The Halifax City Charter imposed a business tax which was to be payable by every occupier of any real property for the purposes of any trade, profession or other calling carried on for purposes of gain. Section 394 of the Charter provided that if any property were let to the Crown or to any person exempt from taxation, such property should be deemed to be in the occupation of the owner thereof, and he should be assessed and rated for the tax according to the purpose for which the property was occupied. The respondent's estate owned premises in Halifax which it let to the Crown for use as a ticket office of the Canadian Northern Railways, the lessee agreeing to pay the business tax, if any. The City assessed the respondent estate as owners to the business tax. The Supreme Court of Canada held that the tax was *ultra vires* as not being "direct taxation" within s. 92 (2) of the British North America Act, 1867.

THE JUDICIAL COMMITTEE (Lords Cave, Haldane, Wrenbury, Darling and Warrington) allowed the appeal.

THE LORD CHANCELLOR, in delivering judgment, said that their lordships had not to consider whether the business tax would ultimately be borne by the owner or somebody else, but whether it was within the meaning of the words used in the Act of 1867. The Act was to be taken as intending that taxation of property and income should belong exclusively to the provincial legislatures and that without any theory as to the ultimate incidence of the taxation. The often cited test whether a tax was direct or indirect, formulated by Mill, was, perhaps, a useful guide in determining whether any new tax fell into one category or another, but it could not have the effect of disturbing the established classification of the old and well-known species of taxation. With the possible exception of *Cotton* v. *Rex*, 1914, A.C. 176, which seemed to have turned upon its own facts, there was no authority in which a tax otherwise recognised as direct had been held to be indirect for the purposes of s. 92 by reason of any theory as to its ultimate incidence. On the other hand, the case of *Montreal City* v. *Att.-Gen. for Canada*, 1923, A.C. 136, appeared to be directly in point, and was in favour of the appellants. Their lordships further held that the premises were not free from assessment to the business tax on the ground that the occupation by the Crown could not be held to be for purposes of gain, and that the tax was not void under s. 125 of the British North America Act, 1867, as being upon property belonging to Canada.

COUNSEL: *F. H. Bell*, K.C., and *W. Gordon Brown*; *J. C. Rand*, K.C., and *Pritt*, K.C.

SOLICITORS: *Linklaters & Paines*; *Freshfields, Leese and Munns.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

Earl of Westmoreland *v.* Inland Revenue Commissioners.

27th October.

REVENUE — STAMP DUTY — VOLUNTARY DISPOSITION — RESETTLEMENT—"PROPERTY CONVEYED OR TRANSFERRED"—COMPUTATION OF *ad valorem* DUTY—FINANCE (1909-10) ACT, 1910, 10 Edw. 7, c. 8, s. 74 (1), (5).

The ad valorem *stamp duty payable on a voluntary disposition, such as a resettlement, including cases where a substantial benefit is conferred upon the parties taking under it, for an inadequate consideration, is to be calculated upon the value of the property conveyed or transferred, and not only on the value of the interests taken by the persons to whom it is transferred.*

Appeal from a decision of Rowlatt, J.

By a deed dated 27th August, 1914, the Sharlston estates in Yorkshire, together with a sum of money then settled by the will of the late Dowager Countess of Westmoreland, to uses under which the late Earl was tenant for life, and the present one tenant in tail, were disentailed, and by a resettlement dated 28th August, 1914, they were resettled subject to the life estate of the late Earl, to such uses and trusts as the late and the present Earl should jointly appoint, and in default of appointment to the use of the present Earl for life with remainder to his first and other sons in tail male, with remainders over. The question in which the opinion of the court was asked was what was the proper stamp duty payable in the resettlement. By the Finance (1909-10) Act, 1910, s. 74 (1): "Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale. By sub-s. (5) a conveyance or transfer not made for valuable consideration is to be deemed to be a voluntary disposition, where the Commissioners are of opinion that by reason of the inadequacy of the sum paid for consideration or other circumstances, the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred. The Commissioners held that the stamp duty must be calculated on the value of the property transferred, i.e., the reversion subject to the existing life interests, and assessed the duty at £66. The appellant contended that the Commissioners had failed to take into account the joint power of appointment, and that, as by its exercise the interests of the reversioners might be defeated, the value of the property transferred to them was merely nominal. Rowlatt, J., upheld the decision of the Commissioners, and the Earl of Westmoreland appealed. The Court dismissed the appeal.

Lord HANWORTH, M.R., having dealt with the facts, and s. 74 of the Finance (1909-10) Act, 1910, said it was quite clear that sub-s. (5) included every conveyance not made to a purchaser for value in good faith, and therefore a resettlement such as the present one, and brought the case into

sub-s. (1) for the purposes of the stamp duty payable. It was argued that the benefit conferred upon the reversioners was a very small one indeed, as it was possible by the exercise of the overriding joint power to appoint it away, besides the fact that there were two intervening life interests. But the power itself conferred a substantial benefit on the persons to whom it was given. The duty was chargeable under the sub-section on the value of the property conveyed or transferred, and not on the value of the interests taken by the persons to whom it was transferred. The Commissioners had ample materials on which to come to the conclusion to which they did come. The judgment of Rowlatt, J., was right, and the appeal must be dismissed.

SARGANT and LAWRENCE, L.JJ., delivered judgment to the same effect.

COUNSEL: *Luxmoore*, K.C., and *F. H. L. Errington*; *Sir Douglas Hogg*, K.C., A.-G., and *J. A. Stamp*.

SOLICITORS: *Royds, Rawstorne & Co.*; *The Solicitor of Inland Revenue*.

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Manchester Corporation *v.* **Audenshaw Urban District Council and Another.** Eve, J. 16th November.

HIGHWAY—STATUTORY LIABILITY—REPAIR AND MAINTENANCE—INCREASE OF TRAFFIC—INCREASED COST OF REPAIR—STANDARD OF MAINTENANCE.

The plaintiffs were empowered by statute to make a road in accordance with the provisions of the Act and to the satisfaction of the defendants. The road was completed in 1878 *in accordance with the Act, but the traffic and cost of maintenance had of late years greatly increased.*

Held, that the plaintiffs were only bound to keep the road in such a state of repair as it was when it was first made, and not to keep it in a condition to bear the increased traffic.

Sharpness New Docks and Gloucester and Birmingham Navigation Co. *v.* Att.-Gen., 1915, A.C. 668, *followed.*

This action was brought to determine the liability of the plaintiffs in respect of the maintenance of a road situate partly in the defendants' district. The road was constructed by the plaintiffs in 1878, under powers conferred by the Manchester Corporation Waterworks and Improvement Act, 1875, whereby the plaintiffs were authorised to construct and maintain the road according to the dimensions, with the materials and in the manner specified in the Act, and to the satisfaction of the defendants' predecessors. In April, 1878, the road was completed in accordance with the statutory requirements, and to the satisfaction of the defendants' predecessors. It served a district which at that time was mainly agricultural, but the neighbourhood had now become distinctly industrial. Down to a date shortly after the conclusion of the war, the plaintiffs had discharged their statutory obligations to maintain the road, but from a date about the commencement of the war it had become apparent that the road was not adequate to carry the increasing traffic. In these circumstances, the plaintiffs sought by this action to have the measure of their obligation judicially determined, and by their statement of claim they asked for a declaration that by virtue of s. 14 (ii) of the Act they were only liable to maintain the road in the condition in which it was completed in or about April, 1878.

EVE, J., in a considered judgment, said he had come to the conclusion that the true intent and effect of the Act was to impose upon the undertakers the burden of maintaining the road so constructed, and not to create a liability so to supplement, alter or replace the construction as to make it available for the passage of traffic wholly dissimilar from that for which the specification was framed. The case was covered by the decision in *Sharpness New Docks and Gloucester and Birmingham Navigation Co.* v. *Att.-Gen.*, 1915, A.C. 668, cited by the plaintiffs. Applying what Lord Parker said in his speech in that case to the facts of the present case, what the plaintiffs had to maintain was the fabric of the particular road of which the size, character and formation was determined by the Act, and there was no principle of construction by which an obligation to maintain a particular structure could be enlarged into an obligation to reconstruct the fabric in such a way that it was materially different in size, character and formation from the particular fabric the subject of the obligation. He (Lord Parker) added: "The standard by which the obligation is to be judged is neither the ordinary traffic when the canal was constructed nor the ordinary traffic of to-day, but the bridge itself as determined by the commissioners under the Act." From this it would appear that the plaintiffs were entitled to a declaration that they were only liable to maintain the road in the condition in which it was when completed in 1878. But the fact that present day conditions were such as to render an obligation to maintain it as in 1878 did not operate to free the plaintiffs from all liability to contribute to the cost of repair, and if in fact it could be established that any default on the part of the plaintiffs in the years during which they had suspended work on the road had increased the expenditure which would now have to be incurred in restoring the road, the plaintiffs would be liable to contribute to the extent of such increase. There would be a declaration as asked with costs.

COUNSEL: *Sir Herbert Cunliffe*, K.C., and *John Bennett*; *Joshua Scholefield*, K.C., and *H. A. Hill*.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *P. M. Heath*, Manchester; *Stibbard, Gibson & Co.*, for *Rupert Wood*, Ashton-under-Lyne, and *William Richards*, Denton.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Rex *v.* **Legislative Committee of the Church Assembly and the Church Assembly:** *ex parte* **Haynes Smith.**

Lord Hewart, C.J., Avory and Salter, JJ. 9th November.

PRAYER BOOK MEASURE, 1927—RULES *nisi* FOR PROHIBITION AND *certiorari*—CHURCH ASSEMBLY—LEGISLATIVE COMMITTEE—DELIBERATIVE BODIES—NO DUTY TO ACT JUDICIALLY.

A rule nisi *for prohibition was directed to the Legislative Committee of the National Assembly of the Church of England to prohibit them from proceeding further with the Prayer Book Measure,* 1927, *and a rule* nisi *for* certiorari *was directed to both the Legislative Committee and the Church Assembly to bring up and quash the order of the Church Assembly approving the measure and the "deposited book" annexed to it.*

Held, that the Church Assembly and the Legislative Committee were not bodies who had the duty to act judicially, and in consequence were not bodies of the kind to which it was appropriate to issue the writs in question.

Rule *nisi* for prohibition directed to the Legislative Committee of the National Assembly of the Church of England, to prohibit them from proceeding with the Prayer Book Measure 1927. Also rule *nisi* for *certiorari*, directed both to the Legislative Committee and the Church Assembly itself, to bring up and quash the order of the Church Assembly approving the measure. The rules, granted at the instance of Sir William Frederick Haynes Smith, K.C.M.G., a member of the Church of England, were sought on the ground that (1) the Prayer Book Measure, 1927, was not a measure passed by the Church Assembly within the meaning of s. 3 (1) of the Church Assembly (Powers) Act, 1919; and (2) that the measure was not passed by the Church Assembly in accordance with the requirements of s. 14 (1) of the Constitution in that it was never debated by each House sitting separately. It was alleged that the measure presented by the Bishops

for final approval was not the same measure as had been debated by the Houses separately under the name of the Prayer Book (Permissive Use) Act, 1923.

Lord HEWART, C.J., in giving judgment, mentioned various questions which had been raised which were not relevant to the rules under consideration. In his opinion the preliminary question, which was of a decisive character, was whether either the Legislative Committee or the Church Assembly was a body of the kind to which a writ of prohibition or *certiorari* ought to issue. In the case of *Rex* v. *Electricity Commissioners*, 1924, 68 Sol. J., 188; 1924, 1 K.B. 171, Atkin, L.J., clearly and concisely restated the circumstances in which those discretionary writs were issued. He there said: "The matter comes before us on rules for writs of prohibition and *certiorari* which have been discharged by the Divisional Court. Both writs are of great antiquity, forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; *certiorari* requires the record or the order of the court to be sent up to the King's Bench Division, to have its legality inquired into, and, if necessary, to have the order quashed. It is to be noted that both these writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a court of justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs." The question for the court in the present case, therefore, was whether either the Church Assembly or the Legislative Committee of the Assembly was a "body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially." It was not enough that the body should have legal authority to determine questions affecting the rights of subjects, it must also have the duty to act judicially. At the present day these writs did not issue except to bodies which were under the duty to act in a judicial capacity. Whatever might be the position of the Church Assembly and the Legislative Committee with reference to their legal authority to determine questions affecting the rights of subjects, his lordship was satisfied that it was not true to say that either of those bodies had the duty to act judicially. Referring to the wording of the constitution, which was recognised by Statute, he was of the opinion that they were dealing with a deliberative body whose function was to deal with the earlier stages of that which, if the whole programme were carried out to the end, might become a Statute. Neither the Assembly nor its Legislative Committee was a body of the kind to which it would be appropriate to issue either a writ of prohibition or a writ of certiorari, and the rules were accordingly discharged with costs.

AVORY, J., and SALTER, J., delivered judgment to the same effect.

COUNSEL: *Sir John Simon*, K.C., and *Wilfred Lewis*, showed cause for the Legislative Committee; *Stuart Bevan*, K.C., and *F. H. L. Errington*, for the Church Assembly; *Sir Malcolm Macnaghten*, K.C., and *Storry Deans* supported the rule.

SOLICITORS: *Gregory, Rowcliffe & Co.; Wainwright & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Mr. H. W. Lathom (Lathom-Brown), solicitor, of Harpenden Herts, celebrated his golden wedding on the 28th ult. He was admitted in 1878.

High Court of Justice, Chancery Division.

REARRANGEMENT OF BUSINESS.

The Order and practice directions printed below are framed to effect a reorganisation of the Chancery Division for the purpose of securing the more speedy disposition of business and especially of the shorter witness actions. In future the Judges will be divided into two groups of three each and there will be three lists, namely, the non-witness list, the witness list, Part I, into which the shorter witness actions will go, and the witness list, Part II, into which the longer witness actions will go.

Lord Chancellor's Office,
House of Lords.

ORDER OF THE LORD CHANCELLOR.

I, GEORGE VISCOUNT CAVE, Lord High Chancellor of Great Britain, by virtue of section 57 of the Supreme Court of Judicature (Consolidation) Act, 1925, section 97 of the Bankruptcy Act, 1914, section 132 of the Companies (Consolidation) Act, 1908, and all other powers enabling me in this behalf, do hereby order as follows:—

1. The Chambers attached to Mr. Justice Eve and Mr. Justice Romer jointly for the purpose of dealing with Chamber applications shall be attached to Mr. Justice Eve, Mr. Justice Russell and Mr. Justice Romer (hereinafter called Mr. Justice Eve's group) jointly.
2. The Chambers attached to Mr. Justice Astbury and Mr. Justice Clauson jointly shall be attached to Mr. Justice Astbury, Mr. Justice Tomlin and Mr. Justice Clauson (hereinafter called Mr. Justice Astbury's group) jointly.
3. Sir Charles Hulbert, Chief Master of the Chancery Division, shall be attached to all the Judges of that Division.
4. Of the other Masters of that Division, four, namely, Archibald Keen, Francis Ridsdale, Pretor Whitty Chandler and Herbert William Jelf, Esquires, shall be attached to Mr. Justice Eve's group, and four, namely, Henry Hughes-Onslow, Esquire, C.B.E., Robert Thesiger Watkin Williams, Joseph Henry Pollock Chitty, and Joseph Arthur Hamnett, Esquires, shall be attached to Mr. Justice Astbury's group.
5. The jurisdiction of the High Court in bankruptcy shall be exercised by or under the direction of the Judges in Mr. Justice Astbury's group, or one or more of them.
6. The jurisdiction of the High Court to wind up Companies shall be exercised by the Judges in Mr. Justice Eve's group, or one or more of them.
7. The Order dated the 22nd day of October, 1926, directing jurisdiction in bankruptcy to be exercised by Mr. Justice Astbury and Mr. Justice Clauson, and the Order dated the 23rd day of July, 1923, directing jurisdiction to wind up Companies to be exercised by Mr. Justice Eve and Mr. Justice Romer shall be revoked as from the 1st day of January, 1928.
8. This Order may be cited as the Chancery Division (Re-arrangement of Business) Order, 1927, and shall come into operation on the 1st day of January, 1928.

Dated this 18th day of November, 1927.

CAVE, C.

PRACTICE NOTE.

As from 1st January, 1928, the Judges of the Chancery Division will be divided into two groups (consisting of Eve, Russell and Romer JJ. and Astbury, Tomlin and Clauson JJ., respectively) instead of three groups as heretofore.

CHAMBERS.

The Chief Master, Sir Charles Hulbert, will be attached to the six Judges and will deal with certain special work, particulars of which will be announced in due course.

The remaining Chamber business of Eve, Russell and Romer JJ. will be dealt with as follows:—

A to D Master Ridsdale (Room 231)	E to K Master Keen (Room 237)
L to R Master H. W. Jelf (Room 315)	S to Z Master Chandler (Room 246)

The remaining Chamber business of Astbury, Tomlin and Clauson JJ. will be dealt with as follows:—

A to D Master Chitty (Room 168)	E to K Master Hughes-Onslow (Room 162)
L to R Master Watkin Williams (Room 157)	S to Z Master Hamnett (Room 163)

The Chief Master, under the direction of the Judges, will make special arrangements in regard to pending business and old matters in cases where it is desirable that the Master who has hitherto dealt with the matter should continue to do so.

WITNESS ACTIONS.

The witness list for each group will from 22nd December, 1927, be divided into two groups. Part I is intended to comprise all actions the trial of which cannot reasonably be expected to exceed 10 hours. It is hoped to make arrangements under which actions in Part I will be tried within a comparatively short period from the entry of trial. Part II will comprise the remaining actions, including long cases such as have in the past obstructed the speedy trial of the ordinary witness actions.

Actions entered for trial after the 21st December, 1927 (the last day of the present sittings) will be entered in Part I of the witness list if on entering the trial a certificate is produced of Counsel who signed the pleadings for the party entering the trial certifying that the trial of the action cannot reasonably be expected to exceed 10 hours. In the absence of such a certificate the action will be entered in Part II.

Actions entered for trial before the 22nd December, 1927, will be placed in Part II of the list, but, as a temporary measure, the Cause Clerk, under the direction of the Chief Registrar, will transfer any such actions to Part I on a certificate to the effect mentioned above by Counsel who signed the pleadings for the party entering the trial.

Subject to the above, actions will be transferred from one part of the list to the other only by direction of the Judge who is taking actions in the part of the list in which the action stands. Applications for such direction may be made by Counsel in Court after intimation to the other side without formal notice of motion.

DISTRIBUTION OF WORK.

The work within each group will be divided among the Judges as follows:—One Judge will take the non-witness work for his group, including Chamber summonses (which will usually be taken on Mondays); one Judge will take Part I of the witness list for his group on Tuesday, Wednesday, Thursday and Friday of each week, and on Mondays will take in Eve J.'s group, the Companies Winding-up list, and in Astbury J.'s group the Bankruptcy list (including Judgment Summonses); one Judge will sit daily to take Part II of the witness list for his group. The judges taking the two parts of the witness lists in Astbury J.'s group will sit as a Divisional Court in Bankruptcy (usually on a Monday) as occasion may require.

HARRY T. EVE.
18th November, 1927. J. M. ASTBURY.

DIRECTION BY THE JUDGES OF THE CHANCERY DIVISION.

We hereby direct that as from the 1st January, 1928, the following applications in Chambers in causes and matters in the Chancery Division be dealt with by Chief Master Sir Charles Hulbert:—

1. Applications under the Adoption of Children Act, 1926.
2. Applications in all causes or matters commenced by a Trustee in Bankruptcy.
3. Applications relating to appeals for extension of patents under the Patents and Designs Acts, 1907 and 1919.
4. Removals and appeals from the County Court under s. 10 of the Guardianship of Infants Act, 1886.
5. References and appeals from the Registrar under the Land Registration Act, 1925.

HARRY T. EVE. MARK L. ROMER.
J. M. ASTBURY. T. J. C. TOMLIN.
FRANK RUSSELL. A. C. CLAUSON.

18th November, 1927.

DIRECTION BY MR. JUSTICE EVE'S GROUP.

We hereby direct that as from the 1st January, 1928, all causes or matters proceeding in the Chambers attached to us (save and except matters which by direction of the Judges of the Chancery Division are to be dealt with by Chief Master Sir Charles Hulbert) be dealt with according to the letter distinguishing the same, as follows:—

A to D	E to K
Master Ridsdale	Master Keen
(Room 231)	(Room 237)
L to R.	S to Z
Master H. W. Jelf	Master Chandler
(Room 315)	(Room 246)

subject to any special arrangements as to pending business and old matters which may be made by the Chief Master under our directions.

HARRY T. EVE.
FRANK RUSSELL.
18th November, 1927. MARK L. ROMER.

DIRECTION BY MR. JUSTICE ASTBURY'S GROUP.

We hereby direct that as from the 1st January, 1928, all causes or matters proceeding in the Chambers attached to us (save and except matters which by direction of the Judges of the Chancery Division are to be dealt with by Chief Master Sir Charles Hulbert) be dealt with according to the letter distinguishing the same, as follows:—

A to D	E to K
Master Chitty	Master Hughes-Onslow
(Room 168)	(Room 162)
L to R	S to Z
Master Watkin Williams	Master Hamnet
(Room 157)	(Room 163)

subject to any special arrangements as to pending business and old matters which may be made by the Chief Master under our directions.

J. M. ASTBURY.
T. J. C. TOMLIN.
18th November, 1927. A. C. CLAUSON.

NOTICE TO THE DISTRICT REGISTRARS OF THE HIGH COURT AT LIVERPOOL AND MANCHESTER.

BY DIRECTION OF THE LORD CHANCELLOR.

In consequence of the re-arrangement of the business of the Chancery Division of the High Court, which will come into operation on the 1st January, 1928, all Chancery actions and matters commenced or proceeding in the Liverpool District Registry or the Manchester District Registry will as from that date be dealt with in Court and in Chambers by Mr. Justice Eve, Mr. Justice Russell, or Mr. Justice Romer.

30th November, 1927. House of Lords,

In Parliament.

Questions to Ministers.

MOTOR ACCIDENT STATISTICS.

Viscount SANDON (Shrewsbury, U.) asked the Minister of Transport whether he would arrange for statistics to be produced annually as to the distribution of motor accidents as between drivers, passengers, and pedestrians, and as to the relationship between the deaths caused and the average number of miles travelled by these vehicles.

Colonel W. ASHLEY, Minister of Transport (New Forest and Christchurch).—I do not think that statistics on the basis suggested by my noble friend would be reliable unless a statutory obligation were placed upon drivers to keep records of their journeys, and even in that event I doubt whether such statistics would contribute materially towards an elucidation of the causes of road accidents or a reduction in their number.

BICYCLE LIGHTS.

Colonel ASHLEY, replying to Sir F. Nelson (Stroud, U.), who asked whether legislation making it necessary for push bicycles to carry rear lights would be undertaken before Christmas, said: The Road Transport Lighting Bill, which would make it obligatory for pedal cyclists to carry either a red rear lamp or a red reflector, has passed Report stage, in this House. I hope that sufficient time will be available for the third reading to be taken at an early date, and for its consideration in another place this session.

REMOVAL OF WAR RESTRICTIONS.

Replying to Major Steel (Ashford, U.), who asked the Home Secretary if he would remove all outstanding war restrictions and regulations at the earliest opportunity, as it was nine years since the armistice was signed. Sir W. Joynson-Hicks, Home Secretary (Twickenham), said: I am not sure what restrictions my hon. friend has in mind, but if he is referring to the general closing hours for shops, I must await the Report of the Departmental Committee which has been inquiring into this question. I expect to receive the report very shortly.

QUESTIONS TO MINISTERS.

The Prime Minister, in a written reply to Major Sir Herbert Cayzer, says the Government may be able to find time this Session for the Mental Deficiency Bill, but the final decision must depend on the state of business.

CRIMINAL APPEAL (SCOTLAND) BILL.

The Criminal Appeal (Scotland) Bill passed through Committee and was reported, without amendment, to the House.

Societies.

Legal Training and Industrial Management.

Sir William Mackenzie, K.C., late President of the Industrial Court and Chairman of the Delegation, sent last year by the Government to study and report on industrial conditions in Canada and the United States, addressed a joint meeting of the Students of the Commercial Faculty of Birmingham University, the Chartered Accountants Society and the Chartered Accountant Students' Society on "Industrial Management," at Birmingham, on 30th ult., Professor Rees presiding. In the course of his lecture, Sir William Mackenzie said that 25 per cent. of the executives in the United States were men holding university degrees. It was significant the large number of management jobs in America that were filled by lawyers or men with legal training. The late Judge Gary for many years presided over the United States Steel Corporation. Among many other examples that might be cited were: Mr. Beatty, President of the Texas Company; Mr. Cortelyon, President of Consolidated Gas of New York; Mr. Charles Donelly, President North Pacific; Mr. Charles Dawes; Mr. Owen D. Young, Chairman of the General Electric; Mr. Fairfax Harrison, President Southern Railroad; Mr. C. F. Kelly, President of Anocanda; Mr. Alvan Macauley, President Packard Motor Company; and Mr. Beatty, K.C., President of the Canadian Pacific Railway, to cite a few names representative of a large range of enterprise. This did not mean that every business man must take a course of law, but that—discounting the incident of personality—a certain habit of thought and quality of mind, which were bred in the solving of legal problems, were effective when transferred to the solution of business problems. The practice of the law was the application of the theory of law on the basis of fact. A high type of legal mind became habituated to the facing of facts and the practice of analysing them.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall, on Thursday, the 1st inst., Mr. J. D. Arthur in the chair. The other directors present were Mr. F. W. Emery, Mr. P. E. Marshall, Mr. J. E. W. Rider, Mr. John Venning, Mr. W. Winterbotham, and Mr. W. M. Woodhouse, with the secretary, Mr. E. E. Barron. A sum of £135 was voted in relief, and a further sum of £200 for special Christmas gratuities to the old people. A new member was elected and other general business transacted.

The Incorporated Society of Auctioneers and Landed Property Agents.

BENEVOLENT FUND.

The benevolent fund, recently established by the society to give donations or to make loans or advances to assist necessitous members or ex-members and their widows and children, has already benefited to the extent of about £220. A strong effort is to be made, both by headquarters and the branches to raise this total to £1,000 during 1928, and we have pleasure in giving publicity to this laudable object.

Law Society's School of Law.

A moot was held at the Law Society's Hall, on Wednesday, the 30th ult., before a court presided over by Mr. C. T. Le Quesne, K.C. The following case was set for argument:—

B. O. Gusman, attired in a hired make-up which gave him the appearance of Mr. Taxer, a statesman well-known to the public, chiefly by reason of his sartorial affectations, called at the shop of A. Faker, a west-end art dealer, and purchased small but valuable *objets d'art* priced at £6,000. Faker, who throughout the transaction addressed his customer as Mr. Taxer, delivered the articles on Gusman's instructions to R. E. Tainer, an accomplice of Gusman; who called to collect them later the same day. Gusman sent by Tainer a cheque for £3,000 on account, which was accepted by Faker. The cheque bore the forged signature of Mr. Taxer, which was detected by his bank on presentation. The bank accordingly refused payment. Before Faker could trace Gusman, the latter had pledged the articles with T. H. Reeball in return for an advance of £3,500. Reeball declined to return the articles to Faker, who thereupon sued Reeball to recover their value. Meanwhile Gusman had been convicted and sentenced at the Blankshire Assizes on a charge of obtaining goods by false pretences from Faker. It was proved at the trial of the action for detinue and conversion by Faker against Reeball that Gusman, while not contradicting Faker's assumption that he was Mr. Taxer, said nothing as to his identity beyond asking a question "You know who I am of course?" as he was giving directions to Faker for collection of the goods by Tainer. To this question Faker replied "Certainly sir, when are you going to put that tax on the export of Old Masters?" Judgment was given for the defendant Reeball, the Judge holding that Gusman had acquired a voidable title to the *objets d'art*, which had not been set aside at the time of the pledge, and that the defendant acted in good faith in making the advance. From this decision Faker appeals to the Court of Appeal.

Mr. Le Quesne was assisted on the bench by Mr. George Bull and Mr. I. L. Maltz (students). The court, by a majority, allowed the appeal, distinguishing the case from *Phillips* v. *Brooks*, 1919, 2 K.B. 243. The following took part as counsel: For the appellant: Mr. T. M. Wechsler (student); Mr. R. D. Leigh (student). For the Respondent: Mr. E. F. Iwi (student); Mr. M. S. Fruitman (student).

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, the 5th December, Mr. F. W. Yates in the chair. Mr. Taylor opened, "That this House deprecates the utterance, by persons in judicial positions, of *obiter dicta* on matters of personal opinion." Mr. Brewis opposed. There also spoke Messrs. Burke, Hughes, Ross, Bell, Pearce and Wood-Smith. Mr. Taylor replied. On the motion being put, the House was equally divided, whereupon the Chairman gave his casting vote in favour of the motion which was therefore carried.

Law Students' Debating Society.

At a meeting of the society held at The Law Society's Hall, on Tuesday, the 6th inst. (chairman, Mr. W. M. Pleadwell), the subject for debate was: "That in the opinion of this house the case of *The King* v. *Minister of Transport, ex parte, H. C. Motor Works Ltd.*, 1927, 2 K.B. 401, was wrongly decided: (Local Government—Hackney Carriage—Motor Omnibus—Licence—Condition—Undertaking to charge fixed minimum Fare—Jurisdiction of Minister of Transport—Order—Certiorari—Mandamus—Roads Act, 1920, 10 & 11 Geo. 5, c. 72, s. 14, sub-s. (3))."

Mr. H. Shanly opened in the affirmative, and Mr. P. R. Kimber seconded, whilst Mr. M. C. Batten replied in the negative and was supported by Mr. W. F. Broadbent.

The following members having spoken, viz.: Messrs. Head, Bates, E. Knight and E. G. M. Fletcher, and the opener having replied, the chairman summed up and the motion was put and carried by six votes. There were sixteen members and one visitor present.

Legal Notes and News.

Honours and Appointments.

The Right Hon. LORD PHILLIMORE has been elected an honorary member of the Hungarian Legal Association. Lord Phillimore was President of the International Law Association, 1905–8, and is the author of several legal works including Phillimore's International Law and Three Centuries of Treaties of Peace and their teaching, published in 1917.

Mr. F. B. MERRIMAN, O.B.E., K.C., Recorder of Wigan, has been elected a Master of the Bench of the Inner Temple. Mr. Merriman was was called to the Bar in 1904 and took silk in 1919.

Mr. W. H. BAINES, Solicitor, Town Clerk's Secretary, and Mr. J. R. HOWARD ROBERTS, Assistant Town Clerk and prosecuting Solicitor, have been appointed Joint Deputy Town Clerks of Liverpool. Mr. Baines was admitted in 1926 and Mr. Roberts in 1924.

The appointment of Mr. WALTER B. CLODE, K.C., as a permanent member and President of the Railway Rates Tribunal has been extended for a further period of two years. Mr. Clode—who was originally appointed President on the death in 1922 of Sir Francis Gore-Brown, K.C.—was called to the Bar in 1881, and took silk in 1912.

The Lord Mayor and Sheriffs, the Recorder (Sir Ernest Wild, K.C.), the Town Clerk (Sir James Bell), the Chamberlain (Sir Adrian Pollock), and Colonel Botterell were amongst those present on Wednesday at a luncheon to the retiring Chairman of the Law and City Courts Committee of the Corporation of the City of London, Mr. H. A. EASTON, solicitor, when he was presented with a handsome pearl tie pin. Mr. Easton—who was admitted in 1902—is the senior partner in the firm of Messrs. Wm. Easton & Sons, solicitors, 43, London Wall, E.C.2.

It is officially announced that the King has approved the appointment of Mr. ERNEST HORATIO ASHWORTH, Barrister-at-Law, Indian Civil Service, to be a Puisne Judge of the High Court of Judicature at Allahabad, in succession to Mr. Sidney Reginald Daniels, Indian Civil Service, who will retire on 1st February.

Mr. FREDERICK OSWALD LANGLEY, M.C., barrister-at-law, has been appointed Recorder of Oswestry, in the place of Mr. R. L. Kenyon, who has resigned. Mr. Langley was called to the Bar in 1907.

Mr. JOHN SUDLOW, solicitor, Assistant Town Clerk of Hornsey, has been appointed Clerk to the Ashford (Kent) Urban District Council in succession to Mr. John Creery (of the firm of Hallet, Creery & Co., solicitors) who has resigned. Mr. Sudlow was admitted in 1920.

Mr. E. W. T. GASKING, solicitor, Deputy Clerk to the Bootle County Borough Justices, has been appointed Clerk to the Birkenhead County Borough Justices, in succession to the late Mr. John Woodend. Mr. Gasking was admitted in 1907.

Mr. WILLIAM HENRY T. BROWN, LL.B., solicitor, has been elected President of the Incorporated Law Society of Liverpool for the ensuing year. Mr. Brown, who was admitted in 1895, is the senior member of the firm of Messrs. J. F. Read and Brown, of 77A, Lord-street, Liverpool, has been a member of the Council of the Liverpool Law Society for the past sixteen years, and is a Councillor and Justice of the Peace for the County Borough of Wallasey. He succeeded Sir Charles Morton as Hon. Secretary of the Association of Provincial Law Societies in 1920.

Mr. ARTHUR E. CHEVALIER, solicitor, has been elected Vice-President of the Incorporated Law Society of Liverpool, and Mr. PARK N. STONE, solicitor, Hon. Treasurer, whilst Mr. L. S. HOLMES, LL.M., has been re-elected Hon. Secretary.

Mr. G. S. MCINTYRE, solicitor, Assistant Town Clerk of Gloucester, has been appointed Town Clerk of that Borough. Mr. McIntyre was admitted in 1924.

Mr. J. F. GUILE, solicitor, Barnard Castle, has been appointed Deputy Clerk to the Hucknall Torkard (Notts) Urban District Council.

Mr. A. NEWBERRY, of Cheshunt, has been appointed Assistant Clerk to the North Middlesex Assessment Committee.

Resignations, &c.

Mr. JOHN BLACK, solicitor, Town Clerk of Wigtown, has tendered his resignation.

Upon his retirement from the position of Deputy Town Clerk of Blackpool, Mr. J. W. PERCY LOFTUS, solicitor, was presented by the Town Clerk (Mr. D. L. Harbottle) and his staff with a silver cigarette case and a pair of gold sleeve-links. Mr. Loftus, who is the only son of the late Mr. Thomas Loftus (for many years Town Clerk of Blackpool), had held the position of Assistant Solicitor to the Corporation from 1899 to 1906 and that of Deputy Town Clerk from the latter year until his retirement recently. He was admitted in 1899.

Mr. W. J. HODGES, solicitor (Messrs. Hart, Scales & Hodges), who has been Clerk to the Leatherhead Urban District Council since 1894, is retiring. He was admitted in 1882.

Mr. HENRY SAGAR, solicitor, Town Clerk of Richmond, although he attains the age of sixty-five on the 25th April next, will, at the request of the Town Council, continue in office up to October, 1928, as from which date his superannuation allowance has been fixed at £600 per annum.

The clerkship of the Cooper's Company has become vacant by the death of Mr. E. L. BOYER, solicitor, 71, Basinghall-street, E.C.2, whose family have filled the office for over 200 years.

Mr. ALEXANDER B. CUTHBERTSON, who has held the appointment of Deputy Town Clerk of Douglas for nearly thirty years, has retired, in consequence of the state of his health.

Professional Partnerships Dissolved.

SEBASTIAN HOSGOOD, HERBERT FRANCIS SHERRATT and ERNEST MELLOR, solicitors, Birmingham (Docker, Hosgood and Co.) as from 30th September, by mutual consent, so far as regards H. F. Sherratt.

LEWIS JOLLY and EDWARD D'ARCY BURBIDGE, solicitors, Thornbury and Bristol (Thurstons, Jolly and Burbidge), by mutual consent as from 30th September. The business will be carried on in future by E. D'Arcy Burbidge.

John Burder Batchelor, Herbert Quallett Foord and Eric Harrison North, solicitors, 2, Pancras-lane, E.C. (Batchelor, Foord and North), by mutual consent. In future the business will be carried on by H. Q. Foord and E. H. North.

Horace Gildon Harwood, Robert Clermont Witt, Charles Mackintosh, Julian George Lousada, Percival Charles Fawcett and Villiers Frederick Cæsar Hawkins, solicitors, 16, Old Broad-street, E.C.2 (Stephenson, Harwood and Tatham), mutually dissolved as from 12th November, so far as concerns H. G. Harwood on his retirement from business. The business will be carried on by R. C. Witt, C. Mackintosh, J. G. Lousada, P. C. Fawcett and V. F. C. Hawkins.

Wills and Bequests.

Mrs. Caroline Emma Balfour-Browne, of Eaton-square, S.W., and of Goldrelea, Dumfries, N.B., who died in Edinburgh, on 23rd July last, widow of J. H. Balfour-Browne, K.C., left unsettled property in her own disposition of the gross value of £78,423. She died intestate.

Mr. William Edwin Pitfield Chapple, solicitor, of The Shrubbery, Axminster, left estate of the gross value of £8,079.

Mr. Frederick George Cole, solicitor, of Buckingham-avenue, Liverpool, left estate of the gross value of £3,764.

Mr. James George Ward, solicitor, of Fieldside, Somerset-road, Ealing, W., of Messrs. Alpe and Ward, Mitre-court-buildings, Temple, E.C., left estate of the gross value of £1,776.

Sir Robert Fulton Fulton, LL.D., of Sloane-gardens, Chelsea, S.W., a former Judge of the Calcutta High Court and Acting Chief Justice of Bengal, who died on 15th October, aged eighty-three, left estate of the gross value of £101,775. He left a "Breeches" Bible and £200 to his wife's niece, Irene Lola Hilda Matthew, and £100 to his parlourmaid, Sara Halls, if still in his service.

Mr. William Ernest Atkinson, of Inglehurst, Ranicliffe-road, Scarborough, retired solicitor, late of Messrs. Atkinson & Sons, of Doncaster, who died on 8th September, aged sixty-four, left estate of the gross value of £16,797, with net personalty £14,593. He left £500 to the executors upon trust to pay the same to the trustees of such existing charity in Doncaster for the benefit of poor widows as they may select.

Mr. Walter Charles Rhoades, of Bedford-hill, Balham, S.W., late of the Supreme Court Pay Office, left estate of the gross value of £4,926.

Mr. Edmund Catt, Willington, Sussex, clerk to the Hailsham Rural Council, who died intestate, left estate of the gross value of £6,858.

Mr. Thomas Wilson, solicitor, of Lower Oxford-street, Castleford, Yorks, left estate of the gross value of £8,958.

A PROSECUTION UNDER THE SOLICITORS' ACT, 1874.

"I have no doubt whatever that you represented yourself to be a solicitor. It was a stupid bit of bluff, but I hope you have had your caution and this will not occur again. This summons will be dismissed under the Probation Act," said Mr. Tassell, at Tower Bridge Court, to William Harry Elphinstone Stone (seventy-two), 42, Bloomfield-street, Paddington, who appeared in answer to a summons for unlawfully, wilfully and falsely pretending that he was a solicitor, contrary to Statute 37 & 38 Vict. c. 68, s. 12.

Mr. Humphreys, solicitor, said the summons was issued at the instance of the Law Society. Defendant was at one time a solicitor in practice, ceasing in 1903. He was then employed by a firm of solicitors, and on 6th September, 1927, applied for a witness summons at this court, representing to three of the officials, in answer to their questions, that he was a solicitor, and the summons was consequently granted.

Evidence having been given in support of these statements, defendant said that according to "Stone," "Any credible person could apply for a witness summons." He denied having said that he was a solicitor, and suggested the witnesses had been mistaken. He wished to express his regret to the court and to point out that what he was alleged to have done would not have profited himself in any way.

THE MONEYLENDERS ACT.

Mr. Bingley, the Marylebone Magistrate, stated that he had consulted with his colleagues in regard to the evidence of character required from moneylenders seeking a licence under the Moneylenders Act, 1927, and they agreed that they must insist upon an independent witness as to character being produced. The Act had placed another serious duty upon magistrates.

THE TEMPLE CHURCH.

A notice issued by the authorities of the Temple Church states: "The influx of visitors to the Temple Church for the Sunday services has now become so great that large numbers have to be turned away for want of room, and some damage to the fabric has been done. In consequence, it has been determined by the Benchers that, beginning with Sunday, 11th December, 1927, admission to such services of members of the general public shall be by orders or tickets only. Each person, not being a member of one of the two Inns, and not having a Bencher's order, who wishes to attend a service on a Sunday or Christmas Day must make application for a ticket, specifying the service:—

(*a*) at least two days before that service by letter addressed to the Treasury of the Inner Temple, or the Treasury of the Middle Temple, E.C.4, the envelope of which letter must be marked 'Church Order,' and must enclose a stamped directed envelope for the reply; or

(*b*) Personally at one or other of the Treasuries during office hours.

"The above will apply also to the service on Friday, 23rd December, at 5 p.m. Holders of orders and tickets are requested to be in the church at least ten minutes before the time fixed for the commencement of the service."

THE TRADES DISPUTES ACT.

An action under the Trade Unions and Trade Disputes Act, 1927, was heard in the Birkenhead County Court on 28th ult., Arthur Ernest Stafford, an electrician, suing the Birkenhead Corporation for alleged wrongful dismissal. He also claimed £16 19s. and a declaration that the corporation acted unlawfully in dismissing him because he did not belong to a certain trade union.

Mr. Justin Lynskey, counsel for the plaintiff, said that Stafford was dismissed in August and reinstated towards the end of September. The proceedings were taken under the Trade Unions and Trade Disputes Act (s. 6), which provided that it should not be lawful for any local or other public authority to make it a condition of the employment of any person that he should or should not be a member of any trade union. The defendant corporation had paid into court the amount of damages originally claimed, and thereby admitted the plaintiff's cause of action, but they had refused to declare that their act was unlawful or to give an undertaking that they would not repeat it.

Judge Whitmore Richards said he had no doubt that the payment into court was for the express purpose of putting an end to the action and avoiding publicity. He did not propose to grant an injunction. He thought the plaintiff was entitled to a declaration, and there would be liberty to apply for an injunction, which he (the judge) hoped would not be necessary. Judgment was entered for the plaintiff with costs.

A SOLICITOR CHARGED.

William Wright, sixty-seven, a Leeds solicitor who had been detained at Leeds Prison under a writ of attachment, appeared at Leeds Police Court charged with fraudulent conversion of £300 and £5. The writ of attachment had been issued as the prisoner had failed to obey an order to furnish certain accounts of an estate. Mr. J. Milner, prosecuting, said that Wright had been in practice in the city for more than forty years. The two charges were of fraudulent conversion of £5 belonging to David Richardson, and of £300 belonging to Joseph Glover Hodgson. An application for a remand until 2nd December, was granted, and bail was allowed.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y Dec. 12	Mr. Synge	Mr. Jolly	Mr. Synge	Mr. Ritchie
Tuesday .. 13	Ritchie	More	Ritchie	Synge
Wednesday 14	Bloxam	Synge	Synge	Ritchie
Thursday .. 15	Hicks Beach	Ritchie	Ritchie	Synge
Friday 16	Jolly	Bloxam	Synge	Ritchie
Saturday .. 17	More	Hicks Beach	Ritchie	Synge
	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr. Justice Russell.	Mr. Justice Tomlin.
M'nd'y Dec. 12	Mr. More	Mr. Jolly	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 13	Jolly	More	Hicks Beach	Bloxam
Wednesday 14	More	Jolly	Bloxam	Hicks Beach
Thursday .. 15	Jolly	More	Hicks Beach	Bloxam
Friday 16	More	Jolly	Bloxam	Hicks Beach
Saturday .. 17	Jolly	More	Hicks Beach	Bloxam

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 22nd December, 1927.

	Middle Price 7th Dec.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85⅜	4 14 0	—
Consols 2½%	54½	4 12 0	—
War Loan 5% 1929-47	101¼	4 19 0	4 18 9
War Loan 4½% 1925-45	96	4 13 6	4 16 6
War Loan 4% (Tax free) 1929-42	100¾	3 19 0	3 19 6
Funding 4% Loan 1960-90	86	4 13 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¼	4 6 0	4 7 0
Conversion 4½% Loan 1940-44	96	4 13 6	4 16 0
Conversion 3½% Loan 1961	75	4 13 6	—
Local Loans 3% Stock 1921 or after	62¾xd	4 15 0	—
Bank Stock	256	4 13 0	—
India 4½% 1950-55	82	4 17 6	4 18 6
India 3½%	70½xd	4 19 0	—
India 3%	60½xd	4 19 0	—
Sudan 4½% 1939-73	95	4 15 0	4 17 0
Sudan 4% 1974	84	4 15 6	4 18 0
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years)	80¾	3 15 0	4 12 6
Colonial Securities.			
Canada 3% 1938	85xd	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	93	4 6 0	5 0 6
Cape of Good Hope 3½% 1929-49	80xd	4 7 0	5 0 0
Commonwealth of Australia 5% 1945-75	97¼xd	5 2 6	5 2 6
Gold Coast 4½% 1956	93xd	4 16 6	4 17 6
Jamaica 4½% 1941-71	92½	4 18 0	4 18 6
Natal 4% 1937	93	4 6 0	5 0 0
New South Wales 4½% 1935-45	90xd	5 0 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 6
New Zealand 4½% 1945	97	4 12 6	4 17 6
New Zealand 5% 1946	101¼xd	4 18 6	4 16 6
Queensland 5% 1940-60	99	5 1 0	5 3 0
South Africa 5% 1945-75	100xd	5 0 0	5 0 0
S. Australia 5% 1945-75	98xd	5 2 0	5 0 0
Tasmania 5% 1945-75	101½	4 18 6	5 0 0
Victoria 5% 1945-75	97½xd	5 2 6	5 0 0
W. Australia 5% 1945-75	100	5 0 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	63xd	4 15 6	—
Birmingham 5% 1946-56	103¼	4 17 0	4 17 0
Cardiff 5% 1945-65	102¼	4 18 6	4 18 0
Croydon 3% 1940-60	68¼	4 8 6	5 0 0
Hull 3½% 1925-55	78	4 9 6	5 0 0
Liverpool 3½% redeemable at option of Corpn.	73xd	4 16 0	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53	4 14 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63	4 15 6	—
Manchester 3% on or after 1941	63	4 14 6	—
Metropolitan Water Board 3% 'A' 1963-2003	63	4 15 6	4 17 0
Metropolitan Water Board 3% 'B' 1934-2003	65	4 12 6	4 15 6
Middlesex C. C. 3½% 1927-47	83	4 5 0	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	63	4 15 6	—
Stockton 5% 1946-66	102	4 18 6	4 19 0
Wolverhampton 5% 1946-56	101½	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	83	4 16 0	—
Gt. Western Rly. 5% Rent Charge	101	4 19 0	—
Gt. Western Rly. 5% Preference	96	5 4 0	—
L. North Eastern Rly. 4% Debenture	79½	5 1 0	—
L. North Eastern Rly. 4% Guaranteed	75	5 6 6	—
L. North Eastern Rly. 4% 1st Preference	68	5 17 6	—
L. Mid. & Scot. Rly. 4% Debenture	81	4 18 6	—
L. Mid. & Scot. Rly. 4% Guaranteed	79½	5 0 6	—
L. Mid. & Scot. Rly. 4% Preference	73½	5 9 0	—
Southern Railway 4% Debenture	81	4 18 6	—
Southern Railway 5% Guaranteed	98	5 2 0	—
Southern Railway 5% Preference	89	5 12 0	—

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RE WILLIAM CAMERON MOORE, deceased. MOORE.—Any person having INFORMATION as to a WILL of WILLIAM CAMERON MOORE, lately of 2, Stone-buildings, Lincoln's Inn, London, Retired Merchant, who died on the 19th October last, is requested to COMMUNICATE with "S.A.," Box 598, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

GIBBS, THOMAS JAMES, Civil and Mining Engineer, last known address 8, Wilton-street, Pimlico, may hear of something to his advantage by COMMUNICATING with "K," Box 843, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

BURKE and RIORDAN, Co. Tipperary, Ireland—Estate about £12,000. INFORMATION WANTED immediately as to JOHN BURKE and his step-brothers and sisters named RIORDAN, born near Ardfinnan, Co. Tipperary, Ireland, from about 1835 to 1855, who went to Australia or U.S.A. from 45 to 70 years ago. Australian papers, please copy.—Apply to "S," Box 1325, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

IF MRS. AGUGGIA (neé WHITTY) will COMMUNICATE with the undersigned she may hear of something to her advantage.—Phillips and Cummings, Abchurch House, Sherborne-lane, London, E.C.4, Solicitors.

IF Mrs. DOROTHY MAYNARD HART will COMMUNICATE with Messrs. Bircham & Co., Solicitors, 46, Parliament-street, Westminster, she will hear of something to her advantage.

FOWKE.—Will any Solicitor or other person who has any knowledge of a Will made by COMMANDER MOULTRIE BICKERTON FOWKE, late Royal Navy and of the Junior Constitutional Club, communicate with Messrs. Merrimans, Solicitors, of 3, Mitre-court, Temple.

SOTHERN. — The next-of-kin of GEORGE SOTHERN, late of 143, Northumberland-street, Abercromby, Liverpool, who died on the 2nd November, 1927, are requested to apply to "S.," Box 943, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

REGINALD JOSEPH MURRAY (deceased), otherwise known as REGINALD JOSEPH MARTINEZ-DE-LAS-RIVAS.—Will any person having in his possession any Wills or draft Wills made in or about the years 1919 and 1920 by the above-named deceased communicate immediately with Fletcher, Jones and Nicholls, Solicitors, 3, Devonshire-square, London, E.C.2?

FREDERICK PROCKTER (discharged from Royal Navy in 1907). Please COMMUNICATE with Messrs. Wigan & Co., Solicitors, Norfolk House, Victoria-embankment, London, when he will hear news to his advantage.

WILL the Solicitor having record of clients: COLE, CRAPPER, DAYMON, within the period, presumably 1800–1890, concerning property at Oxford and Kingston, kindly communicate with C. Daymon, Esq., 33, Fieldway-crescent, Highbury, N.5.

NEXT OF KIN Wanted.—Any persons claiming to be or to be able to give information as to the NEXT OF KIN of the late WILLIAM EASTON, Merchant, of 17, St. Vincent-lane, Glasgow, who resided sometime at 16, Buckingham-terrace, Hillhead, Glasgow, afterwards at 1, Kersland-street, Hillhead, aforesaid, and died at the last-mentioned address on 19th May, 1888, will please COMMUNICATE with Messrs. R. and J. M. Hill Brown & Co., Writers, 41, West George-street, Glasgow, C.2, the Law Agents for Mr. Easton's Trustees.

JOSEPH JOHN JACKSON, deceased.—Any person having knowledge of a Will of the above-named deceased, late of "Glenview," Hereford, Chemist, who died on the 4th day of June, 1927, is requested to communicate forthwith with either of the undersigned T. A. Matthews, Solicitor, 6 & 7 King Street, Hereford; Timbrell, Deighton & Nichols, Solicitors, 90 Cannon-street, London, E.C.4.

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FREEHOLD GROUND RENT, £30 per ann., secured on Nos. 104A and 104B, Finchley-road, N.W. Reversion in 24 years.

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